S. Hrg. 99-887

ESTABLISH FEDERAL STANDARDS AND REGULATIONS FOR THE CONDUCT OF GAMING ACTIVITIES WITHIN INDIAN COUNTRY

HEARING

BEFORE THE

SELECT COMMITTEE ON INDIAN AFFAIRS UNITED STATES SENATE

NINETY-NINTH CONGRESS

SECOND SESSION

ON

S. 902

TO ESTABLISH FEDERAL STANDARDS AND REGULATIONS FOR THE CONDUCT OF GAMING ACTIVITIES WITHIN INDIAN COUNTRY, AND FOR OTHER PURPOSES

AND RELATED BILLS

JUNE 17, 1986
WASHINGTON, DC

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ESTABLISH FEDERAL STANDARDS AND REGULATIONS FOR THE CONDUCT OF GAMING ACTIVITIES WITHIN INDIAN COUNTRY, AND FOR OTHER PURPOSES, AND LEGISLATIVE PROPOSAL OF ADMINISTRATION

TUESDAY, JUNE 17, 1986

U.S. SENATE,
SELECT COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The committee met, pursuant to notice, at 10:15 a.m., in room 106, Dirksen Senate Office Building, Hon. Mark Andrews (chairman of the committee) presiding.

Present: Senators Andrews and DeConcini.

Staff present: Peter S. Taylor, staff director; Michael Mahsetky, staff attorney; Max Richtman, minority staff director; Sheila Rogan, professional staff member; Debbie Storey, professional staff member; June Tracy, professional staff member; Ipo Lung, professional staff member; Irene Herder, staff secretary; and Dick Doubrava, legislative assistant.

Also present: Senators Domenici and Bingaman.

STATEMENT OF HON. MARK ANDREWS, U.S. SENATOR FROM NORTH DAKOTA, AND CHAIRMAN, SELECT COMMITTEE ON INDIAN AFFAIRS

The CHAIRMAN. Good morning. The committee will be in order.

This morning our hearing, of course, is on the two bills presently before this committee, S. 902, introduced by Senator DeConcini on April 4, 1985, and H.R. 1920, which was introduced by Congressman Udall on April 2, 1985, and passed by the House on April 21 of this year.

We will also receive testimony on a legislative proposal forwarded by the administration to the Senate on May 20, 1986.

The purpose of each of these bills is to provide a Federal regulatory program to guard against the intrusion of organized crime into tribal gaming operations in Indian country while at the same time protecting the right of tribes to conduct gaming operations as a means of generating much-needed tribal revenue and employment.

There are, however, substantial differences in each of the three legislative proposals. The Department of the Interior recently conducted a survey of tribes with gaming operations. This survey indicates that there are some 108 gambling facilities on Indian lands.

Of these, 104 had bingo, 93 had pull tabs or punchcards, 15 had card games, 4 had casino gambling, and 15 had other gambling activities. The Department estimated that the combined gross receipts would exceed $100 million annually.

In testimony before this committee in June of last year, tribal witnesses testified that income generated from these gaming operations is devoted to tribal social programs such as health, education, enhancement of housing, road improvement, and tribal economic development activities. In these times of severe fiscal austerity, it would appear that for many tribes the revenue generated from these gaming operations are providing a much needed source of income to the tribes. I might add that in recent years the States have also turned to gaming operations as a source of income.

[The text of S. 902 and H.R. 1920 follows:]

II

99TH CONGRESS
1ST SESSION

S. 902

To establish Federal standards and regulations for the conduct of gaming activities within Indian country, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 4 (legislative day, FEBRUARY 18), 1985

MR. DECONCINI introduced the following bill; which was read twice and referred to the Select Committee on Indian Affairs

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A BILL

To establish Federal standards and regulations for the conduct of gaming activities within Indian country, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Indian Gaming Control Act".

SEC. 2. The Congress finds that—

(1) numerous Indian tribes have become engaged in or have licensed gaming activities in Indian country as a means of generating tribal governmental revenues;

(2) Federal courts have held that Indian tribes have the exclusive right to regulate gaming activity

which is not prohibited by Federal law and which is conducted within a State which does not, as a matter of public policy, prohibit such gaming activity;

(3) some Indian tribes have expressed concern about their ability to continue to regulate or operate gaming activities free from the influence of organized crime, racketeers, professional gamblers, and those who would defraud or otherwise attempt to exert corrupt influence upon them;

(4) existing Federal law does not provide clear standards or regulations necessary to insure the orderly conduct of gaming activities within Indian country;

(5) a principal goal of Federal Indian policy is to promote strong tribal governments, tribal self-sufficiency, and tribal economic development; and

(6) tribal operation and licensing of gaming activities is a legitimate means of generating revenues for governmental operations and programs.

SEC. 3. Congress hereby declares that the establishment of Federal standards for gaming activities in Indian country is necessary to meet the concerns which have been raised about such activities and to protect such activities as a means of genrating needed tribal revenues.

SEC. 4. For the purposes of this Act—

(1) "Secretary" means the Secretary of the Interior;

(2) "Indian tribe" means any Indian tribe, band nation, or other organized group or community which is recognized as eligible by the Secretary of the Interior for the special programs and services provided by the United States to Indians because of their status as Indians;

(3) "Indian country" means (a) all lands within the limits of any Indian reservation and, (b) any lands title to which is either held by the United States in trust for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to a restriction by the United States against alienation;

(4) "gaming" means to deal, operate, carry on, conduct, or maintain for play any banking or percentage game or other game of chance played for money, property, credit, or any representative value, but does not include social games played solely for prizes of minimal value or games played in private homes or residences of prizes of mininal value, or traditional forms of Indian gambling engaged in by individuals as part of or in connection with tribal ceremonies or celebrations; and

(5) "Commission" means the Regional Indian Gaming Commissions which may be established pursuant to section 11 of this Act.

SEC. 5. Unless conducted pursuant to a tribal ordinance or resolution adopted by an Indian tribal government and approved by the Secretary of the Interior or Commission as provided in this Act, gaming within Indian country shall not be legal. Any violation of gaming laws or regulations shall be subject to tribal prosecution under any applicable provisions of the tribal criminal code or to Federal prosecution pursuant to the provisions of any specific Federal law prohibiting gaming activity or the provisions of section 1152 of title 18, United States Code.

SEC. 6. (a) Except where a gaming activity is specifically prohibited within Indian country by Federal law or within a State by State public policy as a matter of criminal law, an Indian tribe may engage in or license and regulate such gaming activity within its jurisdiction if the governing body of the tribe adopts an ordinance or resolution which is approved by the Secretary or Commission pursuant to subsection (b).

(b) The Secretary or Commission shall approve any tribal ordinance or resolution concerning the conduct, licensing, or regulation of gaming activity within the tribe's jurisdiction if it provides, at a minimum that—

(1) the tribe itself will have the sole proprietory interest and will conduct any proposed gaming activity, except as provided in subsection (c);

(2) except as provided in sections 7 and 11(e) of this Act, the net revenues from tribal gaming operations will be used solely to fund tribal government operations, programs, economic development and to provide for the general welfare of the tribe and its members and may also be donated to charity organizations and to help fund operations of local governmental agencies;

(3) annual independent audits will be performed by the tribe; and

(4) no individual tribal member or nontribal individual or entity will have any proprietary interest in any tribal gaming operation.

(c) A tribal ordinance or resolution may provide for the licensing and regulation of gaming conducted or operated by individual tribal members or nontribal individuals or entities: *Provided*, That licensing requirements and regulations governing such games shall be at least as restrictive as those established by State law governing similar gaming within the jurisdiction of the State. No individual tribal member or nontribal individual or entity shall be eligible to receive a tribal license to conduct gaming activity within a tribe's jurisdiction if such individual or entity is not otherwise eligible to receive a State license to conduct the same activities within the jurisdiction of the State.

(d) Any duly submitted tribal gaming ordinance or resolution shall be approved or disapproved by the Secretary or Commission within ninety days of its submission. Any ordinance or resolution which has not been acted upon within ninety days after it is submitted shall be deemed to have been approved by the Secretary or Commission.

SEC. 7. (a) Subject to the approval of the Secretary or Commission, a tribe may enter into a management contract for the operation and management of a tribal gaming enterprise for a reasonable fee which shall not exceed 49 per centum of the net revenues of such operation: *Provided*, That, before approving such contract, the Secretary or Commission shall require and obtain the following information:

(i) the name, address, and other additional pertinent background information of every individual having a financial interest in or management responsibility for such contract or in the case of a publicly held company, of those individuals who serve on the Board of Directors and as officers of such company;

(ii) a description of any previous experience which the contractor or the persons listed pursuant to subparagraph (i) has had with other gaming contracts with

Indian tribes or gaming licenses issued by an Indian tribe or State, including the name and address of the licensing agency or other parties to any other gaming contract; and

(iii) a complete financial statement of the contractor and those persons listed pursuant to subparagraph (i).

(b) The Secretary or Commission shall further require that all management contracts entered into pursuant to this section shall specifically provide that adequate accounting procedures are maintained and that verifiable financial reports are prepared by or provided to the tribal governing body on at least a monthly basis.

(c) Each properly submitted contract shall be considered and notification of approval or disapproval shall be provided to the parties within ninety days of receipt of the proposed contract. The decision of the Secretary or Commission shall be final. Any contract not acted upon within ninety days shall be considered as having been approved.

(d) The Secretary or Commission shall not approve and may void any contract where he or the Commission has knowledge that any person listed pursuant to subparagraph (i) of this section is an elected member of the governing body of the Indian tribe which is a party to the management contract, has been or subsequently is convicted of any felony or gambling offense, has provided false or misleading statements or information to the Secretary or Commission pursuant to this section or the management contractor has deliberately or substantially failed to comply with the terms of the management contract or the tribal gaming ordinance or resolution adopted and approved pursuant to this Act.

SEC. 8. In fulfilling his responsibilities under this Act, the Secretary or the Commission shall have the power to (1) inspect and examine all premises wherein gaming is conducted pursuant to the provisions of this Act, and (2) demand access to and inspect, examine, photocopy, and audit all papers, books, and records respecting the gross income produced by a gaming business and require verification of income and all other matters respecting the enforcement of this Act and regulations, ordinances, and resolutions enacted pursuant to this Act.

SEC. 9. The Secretary or Commission shall have the duty to preserve any and all information received pursuant to section 6(b)(3) and section 8 as private and confidential; and such information shall not be subject to disclosure to the public.

SEC. 10. Any existing gaming operation in Indian country shall have one year from the date of enactment of this Act to comply with this Act.

SEC. 11. (a) The Indian tribes respectively located within the administrative jurisdiction of the existing area offices of the Bureau of Indian Affairs shall have the right respectively to organize and establish a Regional Indian Gaming Commission and adopt an appropriate governing document which shall become effective when ratified within any twelve-month period by a majority vote of the governing bodies of no less than two-thirds of the Indian tribes respectively in each area. Such governing document, when ratified as aforesaid and approved by the Secretary, shall become effective within ninety days of approval by the Secretary. Any duly ratified governing document shall be deemed to be approved if not acted upon by the Secretary within ninety days of its being duly ratified by the Indian tribes in the respective area and shall become effective ninety days following such period. Amendments to the governing document may be ratified by the Indian tribes and approved by the Secretary in the same manner as the governing document. The governing document shall be revocable upon a majority vote, within any twelve-month period, of the governing bodies of no less than a majority of the Indian tribes respectively in each area.

(b)(1) Each Commission shall consist of seven voting representatives and two nonvoting representatives. The voting representatives shall be selected in accordance with the governing document of the respective Commissions. One nonvoting representative, respectively, shall be selected by the Secretary of the Interior and the Attorney General of the United States.

(2) No representative may serve on the Commission who has been convicted of any felony or gaming offenses, or who has a financial interest in or management responsibility for any management contract authorized pursuant to section 7 of this Act.

(c) Each Commission, upon the effective date of its governing document pursuant to subsection (a) of this section, shall assume and have all the same authority and responsibility that the Secretary has in the respective area to approve or disapprove all tribal gaming ordinances, resolutions, and management contracts, and otherwise regulate all Indian gaming activities in such area pursuant to the authorities contained in this Act. All of the Secretary's authority and responsibilities pursuant to this Act shall be subsumed by the respective Commissions in such area upon the effective date of their governing documents except as provided in subsections (a) and (b) of this section and section 12 of this Act.

(d) Each Commission shall meet at least quarterly each year and shall maintain permanent offices and establish such procedures and maintain such records as are necessary to carry out their duties and responsibilities under this Act.

(e) The expenses of each Commission shall be paid for by assessments made by the respective Commissions of each Indian tribe maintaining gaming activities as defined in section 3 of this Act and located within the regional jurisdiction of the respective Commission. The method of assessing such fees shall be set forth in the governing document of each Commission. The Commission may revoke or suspend any tribal gaming ordinance or resolution of any Indian tribe which fails to pay their assessment to the Commission within ninety days after such tribe receives notice that such assessments are due. The Commission shall further impose a penalty of 5 per centum on any assessment or portion of such assessment which is ten to thirty days past due and 3 per centum each month or portion thereof that such assessment remains unpaid. The Commission may grant a waiver of any portion or all of the assessment or penalty of any Indian tribe for good cause shown.

SEC. 12. After notice and hearing, the Secretary may suspend the operation of any Comnmission and reassume the authority and responsibilities subsumed by any Commission if he finds that such Commission has failed or is incapable of effectively carrying out its responsibilities under this Act. The Secretary shall provide whatever assistance is necessary to a Commission to attempt to correct any deficiences in the operation of a Commission prior to any proposed Secretarial suspension of Commission operations and following any such suspension, if necessary.

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II

99TH CONGRESS
2D SESSION

H. R. 1920

IN THE SENATE OF THE UNITED STATES

APRIL 22 (legislative day, APRIL 21), 1986

Received; read twice and referred to the Select Committee on Indian Affairs

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AN ACT

To establish Federal standards and regulations for the conduct of gaming activities on Indian reservations and lands, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Indian Gaming Regulatory Act".

SEC. 2. (a) The Congress finds that—

(1) numerous Indian tribes have become engaged in or have licensed gaming activities on Indian lands as a means of generating tribal governmental revenue;

(2) Indian tribes have the exclusive right to regulate gaming activity on Indian lands which is not specifically prohibited by Federal law and which is conducted within a State which does not, as a matter of criminal law and public policy, prohibit such gaming activity;

(3) there are no existing statutes which require approval of management contracts dealing with Indian gaming;

(4) existing Federal law does not provide clear standards or regulations necessary to insure the orderly conduct of gaming activities on Indian lands;

(5) a principal goal of Federal Indian policy is to promote tribal economic development, tribal self-sufficiency, and strong tribal government; and

(6) tribal operation and licensing of gaming activities is a legitimate means of generating revenues.

(b) The Congress declares that the establishment of Federal standards for gaming activity on Indian lands and a National Indian Gaming Commission are necessary to meet the concerns regarding gaming activities and to protect such activities as a means of generating tribal revenue.

SEC. 3. (a) Except as provided in subsection (b), Class II and III gaming regulated by this Act shall be unlawful on any lands acquired by the Secretary, under any existing authority, in trust for the benefit of any Indian tribe after December 4, 1985, if such lands are located outside the boundaries of such tribe's reservation.

(b) Subsection (a) shall not apply if the Indian tribe requesting the acquisition of such lands in trust obtains the concurrence of the Governor of the State, the State legislature, and the governing bodies of the county and municipality in which such lands are located.

(c)(1) Except as provided in paragraph (2) of this subsection, during the four-year period beginning on the date of enactment of this Act, Class III gaming shall be unlawful on any Indian lands.

(2) Within sixty days of the date of enactment of this Act, the Secretary shall identify and prepare a list of each separate Class III gaming activity actually operated on Indian lands as of January 1, 1986, and shall publish such list in the Federal Register. Such Class III gaming activities, if otherwise legal under existing law and so long as they remain within the same nature and scope, shall not be subject to the provisions of paragraph (1) of this subsection.

(3) During the four-year period established by paragraph (1) of this subsection, the Commission shall—

(A) apply to the Class III gaming activities identified in paragraph (2) of this subsection the appropriate Class II provisions of sections 11, 12, and 13, and

(B) within one hundred and twenty days after enactment of this Act, adopt and apply to such Class III gaming activities a regulatory scheme which is substantially equivalent to those of the State within whose boundaries such gaming occurs and shall require that such Class III gaming activities be brought into compliance with such regulations within sixty days after publication of such regulatory scheme in the Federal Register.

The provisions of this Act relating to the levy and collection of civil fines and temporary and permanent closures shall be applicable to such Class III gaming activities during the four-year period.

SEC. 4. Provisions of the Internal Revenue Code of 1954, as amended, concerning the taxation and the reporting and withholding of taxes pursuant to the operation of a gambling or wagering operation shall apply to the operations in accord with the Indian Gaming Regulatory Act the same as they apply to State operations.

SEC. 5. (a) There is established within the Department of the Interior an independent commission to be known as the National Indian Gaming Commission.

(b)(1) The Commission shall be composed of eight members as follows:

(A) a Chairman who shall serve full-time and who shall be appointed by, and serve at the pleasure of, the Secretary;

(B) a member to be selected by the Attorney General and appointed by the Secretary;

(C) five members, at least three of whom shall be enrolled members of federally recognized tribes, to be appointed by the Secretary from a list of not less then ten nor more than twenty candidates submitted and approved by a majority of the tribes then engaged in or regulating gaming activities; and

(D) one member appointed by the Secretary after consultation with appropriate organizations or entities, who shall represent the interest of the States.

(2) Not more than four members of the Commission shall be of the same political party.

(3)(A) Except for the Chairman and except as otherwise provided in this paragraph, members shall be appointed for terms of three years.

(B) Of the members first appointed—

(i) the member appointed pursuant to paragraph (1)(B) and two of the members appointed pursuant to paragraph (1)(C) shall be appointed for a term of two years; and

(ii) the remaining members appointed pursuant to paragraphs (1)(C) and (1)(D) shall be appointed for a term of three years.

(4) Any individual who—

(A) has been convicted of a felony or gaming offense;

(B) has any management responsibility in any gaming activity regulated pursuant to this Act; or

(C) has a financial interest in, or management responsibility for, any management contract approved pursuant to section 12 of this Act;

shall not be eligible for appointment to, or to continue service on, the Commission.

(5) Except for the Chairman, a member of the Commission may be removed for good cause by a majority vote of the remaining members subject to the approval of the Secretary or, in the case of a member appointed pursuant to paragraph (1)(B), the Attorney General.

(c)(1) Vacancies occurring on the Commission as a result of the expiration of the terms of appointment shall be filled in the same manner as the original appointment. A member may serve after the expiration of his term until his successor has been appointed.

(2) Other vacancies occurring on the Commission shall be filled by a majority vote of the Commission and members

so appointed shall serve the remainder of the terms for which his predecessor was appointed.

(d) Five members of the Commission shall constitute a quorum.

(e) The Commission shall select, by majority vote, one of the members to serve as Vice-Chairman who shall serve as Chairman during meetings of the Commission in the absence of the Chairman.

(f) The Commission shall meet at the call of the Chairman or a majority of its members.

(g)(1) The Chairman of the Commission shall be paid at a rate equal to that of level V of the Executive Schedule (5 U.S.C. 5316).

(2) Except as provided in paragraph (3), the other members of the Commission shall each be paid at a rate equal to the daily equivalent of the maximum annual rate of basic pay in effect for grade GS-18 of the General Schedule (5 U.S.C. 5332) for each day, including travel time, during which they are engaged in the actual performance of duties vested in the Commission.

(3) Members of the Commission who are full-time officers or employees of the United States shall receive no additional pay by reason of their service on the Commission.

(4) All members shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in the performance of their duties.

SEC. 6. (a) The Chairman of the Commission shall have the exclusive power—

(1) to approve tribal ordinances or resolutions regulating Class II gaming as provided in section 11(b);

(2) to approve management contracts for Class II gaming as provided in section 12; and

(3) to select, appoint, and supervise the staff of the Commission as provided in section 8.

(b) The Chairman shall have power, subject to the approval of the Commission—

(1) to appoint a General Counsel of the Commission; and

(2) to issue orders of temporary closure of gaming activities as provided in section 14(b).

(c) The Chairman shall have power, subject to an appeal to the Commission, to levy and collect civil fines as provided in section 14(a).

(d) The Chairman shall have such other powers as may be delegated by the Commission.

SEC. 7. (a) The Commission shall have specific power, not subject to delegation—

(1) upon the recommendation of the Chairman, to approve the annual budget of the Commission as provided in section 17;

(2) to adopt regulations for the assessment and collection of civil fines as provided in section 14(a);

(3) by a vote of not less than five members, to adopt the annual assessments as provided in section 17;

(4) by a vote of not less than five members, to authorize the Chairman to issue subpoenas as provided in section 15; and

(5) by a vote of not less than five members and after a full hearing, to make permanent a temporary order of the Chairman closing a gaming activity as provided in section 14(b).

(b) The Commission shall have power—

(1) to monitor Indian gaming activities on a continuing basis;

(2) to inspect and examine all premises where Indian gaming is conducted;

(3) to conduct or cause to be conducted such background investigations as may be necessary;

(4) to demand access to and inspect, examine, photocopy, and audit all papers, books, and records re-

specting gross income of a gaming activity and all other matters necessary to the enforcement of this Act;

(5) to use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States;

(6) to procure supplies, services, and property by contract in accordance with applicable Federal laws and regulations;

(7) to enter into contracts with Federal, State, tribal and private entities for activities necessary to the discharge of the duties of the Commission;

(8) to hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission deems appropriate;

(9) to administer oaths or affirmations to witnesses appearing before the Commission; and

(10) to establish and implement such other standards, guidelines, and regulations as it deems appropriate not inconsistent with this Act and other applicable law.

SEC. 8. (a) The Chairman, with the approval of the Commission, shall appoint a General Counsel to the Commission who shall have a background in Indian affairs. The General Counsel shall be paid at the annual rate of basic pay payable for GS-18 of the General Schedule (5 U.S.C. 5332).

(b) The Chairman shall appoint other staff of the Commission without regard to the provisions of title 5, United States Code, governing appointments in the competitive service. Such staff shall be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that no individual so appointed may receive pay in excess of the annual rate of basic pay payable for GS-17 of the General Schedule under section 5332 of that title.

(c) The Commission may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, but at rates for individuals not to exceed the daily equivalent of the maximum annual rate of basic pay payable for GS-18 of the General Schedule.

(d) Upon the request of the Chairman, the head of any Federal agency is authorized to detail any of the personnel of such agency to the Commission to assist the Commission in carrying out its duties under this Act, unless otherwise prohibited by law.

(e) The Secretary or Administrator of General Services shall provide to the Commission on a reimburseable basis such administrative support services as the Commssion may request.

SEC. 9. The Commission may secure directly from any department or agency of the United States information necessary to enable it to carry out this Act. Upon the request of the Chairman the head of such department or agency shall furnish such information to the Commission, unless otherwise prohibited by law.

SEC. 10. The Secretary shall promptly appoint the members of the Commission, as provided in section 5 of this Act, and shall provide staff and support assistance to enable the Commission to meet and organize as soon as practicable thereafter.

SEC. 11. (a)(1) Class I gaming shall be within the exclusive jurisdiction of the Indian tribes and shall not be subject to the provisions of this Act.

(2)(A) Except as provided in subparagraphs (B) and (C), Indian tribes may engage in, or license and regulate, Class II gaming activity on Indian lands if the governing body of the Indian tribe adopts an ordinance or resolution to that effect which is approved by the Commission pursuant to subsection (b) or (c) of this section. Licenses are required for each place, facility, or location of Class II gaming activities.

(B) Subparagraph (A) shall not apply with respect to an Indian tribe if—

(i) a gaming activity is specifically prohibited on Indian lands by Federal law; or

(ii) such gaming activity is prohibited by the State within which such tribe is located as a matter of State public policy and criminal law.

(b)(1) An Indian tribe may engage in, or license and regulate, Class II gaming activity on the Indian lands of such tribe if the governing body of the tribe adopts an ordinance or resolution which is approved by the Chairman.

(2) The Chairman shall approve any tribal ordinance or resolution concerning the conduct, licensing, or regulation of Class II gaming activity on the Indian lands of such tribe if such ordinance or resolution provides that—

(A) except as provided in paragraph (3), the Indian tribe itself shall have the sole proprietary interest and responsibility for the conduct of any gaming activity;

(B) net revenues from any tribal gaming activity are not to be used for purposes other than—

(i) to fund tribal government operations or programs;

(ii) to provide for the general welfare of the Indian tribe and its members;

(iii) to promote tribal economic development;

(iv) to donate to charitable organizations; or

(v) to help fund operations of local government agencies:

Provided, That, if such net revenues are directly or indirectly used for per capita payments to tribal members, those payments are subject to Federal tax.

(C) annual outside independent audits of the gaming activity will be obtained by the Indian tribe and made available to the Commission;

(D) all contracts for supplies, services, or concessions for a contract amount in excess of $25,000 annually, except contracts for professional legal or accounting services, relating to such gaming activity shall be subject to such independent audits; and

(E) the construction and maintenance of the gaming facility, and the operation of that gaming activity, is conducted in a manner which adequately protects the environment and the public health and safety.

(3) A tribal ordinance or resolution may provide for the licensing or regulation of Class II gaming activities owned by individuals or entities other than the Indian tribe, except that the tribal licensing requirements shall be at least as restrictive as those established by State law governing similar gaming within the jurisdiction of the State within which such tribe is located. No individual or entity, other than the tribe, shall be eligible to receive a tribal license to own a Class II gaming activity within the tribe's jurisdiction if such individual or entity would not be eligible to receive a State license

to conduct the same activity within the jurisdiction of the State.

(4) Not later than one hundred and sixty days after the submission of any tribal gaming ordinance or resolution, the Chairman shall approve such ordinance or resolution if it meets the requirements of this subsection. Any such ordinance or resolution not acted upon at the end of that one hundred and sixty day period shall be deemed to have been approved by the Chairman.

SEC. 12. (a) Subject to the approval of the Chairman, an Indian tribe may enter into a management contract for the operation and management of a Class II gaming activity, except that, before approving such contract, the Chairman shall require and obtain the following information:

(1) the name, address, and other additional pertinent background information on each person or entity (including individuals comprising such entity) having a financial interest in, or management responsibility for, such contract, or, in the case of a corporation, those individuals who serve on the Board of Directors of such corporation and each of its stockholders who hold (directly or indirectly) 10 per centum or more of its issued and outstanding stock;

(2) a description of any previous experience which each person listed pursuant to paragraph (1) has had

with other gaming contracts with Indian tribes or with the gaming industry generally, including specifically the name and address of any licensing or regulatory agency with which such person has had contact relating to gaming; and

(3) a complete financial statement of each person listed pursuant to paragraph (1).

(b) Any management contract entered into pursuant to this section shall specifically provide—

(1) that adequate accounting procedures are maintained and that verifiable financial reports are prepared by or provided to the tribal governing body on a monthly basis;

(2) that appropriate tribal officials shall have reasonable access to the daily operations of the gaming activity and shall have the right to verify the daily income made from any such tribal gaming activity;

(3) for a minimum guaranteed payment to the Indian tribe that has preference over the retirement of development and construction costs;

(4) for an agreed ceiling for the repayment of development and construction costs;

(5) that the term of the contract shall not exceed five years; and

(6) for grounds and mechanisms for terminating such contract: *Provided,* That contract termination shall not require the approval of the Commission.

(c) The Chairman may approve a management contract providing for a fee based upon a percentage of the net revenues of a tribal gaming activity if he determines that such percentage fee is reasonable in light of surrounding circumstances, but in no event shall such fee exceed 40 per centum of the net revenues.

(d) Not later than one hundred and twenty days after the submission of a contract, the Chairman shall approve or disapprove such contract on its merits. Any such contract not acted upon at the end of such time shall be deemed to have been approved by the Chairman.

(e) The Chairman shall not approve any contract where he determines that:

(1) any person listed pursuant to paragraph (a)(1) of this section—

(A) is an elected member of the governing body of the Indian tribe which is the party to the management contract;

(B) has been or subsequently is convicted of any felony or gaming offense;

(C) has knowingly and willfully provided materially important false statements or information to the Commission or the tribe pursuant to this Act; or

(D) has been determined to be a person whose prior activities, criminal record if any, or reputation, habits, and associations pose a threat to the public interest or to the effective regulation and control of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of gaming or the carrying on of the business and financial arrangements incidental thereto;

(2) the management contractor has, or has attempted to, unduly interfere or influence for its gain or advantage any decision or process of tribal government relating to the gaming activity;

(3) the management contractor has deliberately or substantially failed to comply with the terms of the management contract or the tribal gaming ordinance or resolution adopted and approved pursuant to this Act; or

(4) a trustee exercising the skill and diligence that a trustee is commonly held to would not approve the contract.

(f) The Chairman, after notice and hearing, shall have the authority to require appropriate contract modifications or may void any contract if he subsequently determines that any of the provisions of this section have been violated.

(g) No management contract for the operation and management of a Class II gaming activity shall transfer or, in any other manner, convey any interest in land or other real property unless clearly specified in writing in said contract.

SEC. 13. (a) As soon as practicable after the organization of the Commission, the Chairman shall notify each Indian tribe or management contractor who, prior to the enactment of this Act, adopted an ordinance or resolution authorizing Class II gaming or entered into a management contract, that such ordinance, resolution, or contract must be submitted for his review within sixty days of such notification.

(b)(1) Within ninety days after the submission of an ordinance or resolution authorizing Class II gaming pursuant to subsection (a), the Chairman shall review such ordinance to determine if it conforms to the requirements of section 11(b) of this Act.

(2) If he determines that such ordinance or resolution conforms to section 11(b), he shall approve it.

(3) If he determines that such ordinance or resolution does not conform to the requirements of section 11(b), he shall provide written notification of necessary modifications

to the Indian tribe which shall have not more than one hundred and twenty days to come into compliance.

(c)(1) Within one hundred and eighty days after the submission of a management contract pursuant to subsection (a), the Chairman shall subject such contract to the requirements and process of section 12 of this Act.

(2) If he determines, at the end of such period, that such contract and the management contractor meet the requirements of section 12, he shall approve it.

(3) If he determines, at the end of such period, that such contract and the management contractor do not meet the requirements of section 12, he shall provide written notification to the parties to such contract of modifications necessary to come into compliance and the parties shall have not more than one hundred and twenty days to come into compliance.

(4) Where a management contract submitted pursuant to subsection (a) has been previously approved by the Secretary or his representative, said contract shall be deemed in compliance hereof and no further action shall be required.

SEC. 14. (a)(1) The Commission shall have authority to authorize the Chairman to levy and collect appropriate civil fines, not to exceed $10,000 per violation, against an Indian gaming activity or a management contractor engaged in gaming activities regulated by this Act or by regulations adopted by the Commission pursuant to this Act.

(2) The Commission shall, by regulation, provide an opportunity for an appeal and hearing before the Commission on fines levied and collected by the Chairman.

(b)(1) The Chairman shall have power to order temporary closure of Indian gaming activities for substantial violation of the provisions of this Act or regulations adopted by the Commission pursuant to this Act.

(2) Not later than thirty days after the issuance by the Chairman of an order of temporary closure, the Indian tribe or management contractor involved shall have a right to a hearing before the Commission to determine whether such order should be made permanent or dissolved. The Commission may, by a vote of not less than five of its members, order a permanent closure of the gaming operation after such hearing.

(c) A decision of the Commission to give final approval of a fine levied by the Chairman or to order a permanent closure pursuant to this section shall be appealable to the appropriate Federal district court pursuant to the Administrative Procedures Act, title 5, United States Code.

SEC. 15. (a)(1) The Commission may authorize the Chairman to issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence that relates to any matter which the Commission is empowered to investigate by this Act.

(2) Such attendance of witnesses and the production of such evidence may be required from any place within the United States at any designated place of hearing within the United States.

(3) If a person issued a subpoena under paragraph (1) refuses to obey such subpoena or is guilty of contumacy, any court of the United States within the judicial district within which the hearing is conducted or within the judicial district within which such person is found or resides or transacts business may, upon application of the Commission, order such person to appear before the Commission to produce evidence or to give testimony relating to the matter under investigation. Any failure to obey such order of the court may be punished by such court as a contempt thereof.

(4) The subpoenas of the Commission shall be served in the manner provided for subpoenas issued by a United States district court under the Federal Rules of Civil Procedure for the United States district courts.

(5) All process of any court to which application may be made under this section may be served in the judicial district in which the person required to be served resides or may be found.

(b) No person shall be excused from attending and testifying or from producing books, records, correspondence, documents, or other evidence in obedience to a subpoena, on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture by reason of any transaction, matter, or thing commencing which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, except that such individual so testifying shall not exempt from prosecution and punishment for perjury committed in so testifying.

SEC. 16. (a) Except as provided in subsection (b), the Commission shall preserve any and all information received pursuant to this Act as confidential pursuant to the provisions of paragraphs (4) and (7) of section 552(b) of title 5, United States Code.

(b) The Commission may, when such information indicates a violation of Federal, State, or tribal criminal statutes or ordinances, provide such information to the appropriate law enforcement officials.

(c) The Attorney General of the United States is authorized to investigate activities associated with gaming authorized by this Act which may be a violation of Federal law, including but not limited to the Major Crimes Act (18 U.S.C. 1153), the Assimilative Crimes Act (18 U.S.C. 13), and 18 U.S.C. 1163. The Attorney General is authorized to enforce such laws, or assist in the enforcement of such laws, upon evidence of violation as a matter of Federal law, or upon the referral of information by the Commission pursuant to section 16(b) of this Act.

SEC. 17. (a)(1) Not less than three-quarters of the annual budget of the Commission shall be derived from an assessment of not to exceed 2½ per centum of the gross revenues from each Indian gaming activity regulated pursuant to this Act.

(2) The Commission, by a vote of not less than five of its members, shall annually adopt the rate of assessment authorized by this section which shall be uniformly applied to all gaming activities and which shall be payable on a quarterly basis.

(3) Failure to pay the assessment shall, subject to the regulations of the Commission, be grounds for revocation of any approval or license of the Commission required under this Act for the operation of tribal gaming.

(4) To the extent that funds derived from such assessments are not expended or committed at the end of the budget year, such surplus funds shall be credited to each gaming activity on a pro rata basis against the assessment for the succeeding year.

(5) For purposes of this section, gross revenues shall constitute the total wagered monies less any amounts paid out as prizes or paid for prizes awarded.

(b)(1) The Commission, in coordination with the Secretary and in conjunction with the fiscal cycle of the United States, shall adopt an annual budget for the expenses and operation of the Commission.

(2) The budget of the Commission may include a request for appropriations, as authorized by section 18, in an amount not to exceed one-third the amount of funds derived from assessments authorized by subsection (a) for the fiscal year preceding the fiscal year for which the appropriation request is made.

(3) The request for appropriations pursuant to section 16 shall be subject to the approval of the Secretary and shall be included as a part of the budget request of the Department of the Interior.

SEC. 18. (a) Subject to the provisions of section 17, there is hereby authorized to be appropriated such sums as may be necessary for the operation of the Commission.

(b) Notwithstanding the provisions of section 17, there is hereby authorized to be appropriated not to exceed $2,000,000 to fund the operation of the Commission for the first fiscal year after the date of enactment of this Act.

SEC. 19. For the purposes of this Act—

(1) "Attorney General" means the Attorney General of the United States;

(2) "Commission" means the National Indian Gaming Commission established pursuant to section 5 of this Act;

(3) "Indian lands" means—

(i) all lands within the limits of any Indian reservation; and

(ii) any lands title to which is either held in trust by the United States for the benefit of any Indian tribe or individual or which is held by any Indian tribe or individual subject to a restriction by the United States against alienation over which an Indian tribe exercises governmental power;

(4) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians which is recognized as eligible by the Secretary for the special programs and services provided by the United States to Indians because of their status as Indians and is recognized as possessing powers of self-government;

(5) "gaming" means to deal, operate, carry-on, conduct, or maintain for play any banking or percentage game of chance played for money, property, credit, or any representative value, and shall consist of—

(A) "Class I gaming" which shall include social games solely for prizes of minimal value or traditional forms of Indian gaming engaged in by individuals as a part of or in connection with tribal ceremonies or celebrations;

(B) "Class II gaming" which shall include the game of chance commonly known as bingo or lotto and which is played for prizes, including monetary prizes, with cards bearing numbers or other designations, the holder covering such numbers or designations as objects, similarly numbered or designated, are drawn or electronically determined from a receptacle and the game being won by the person first covering a previously designated arrangement of numbers or designations on such card, and shall also include pull-tabs, punch boards, and other games similar to bingo; and

(C) "Class III gaming" which shall include all other forms of gaming not defined in subparagraphs (A) and (B) of this paragraph;

(6) "net revenues" means gross revenues of an Indian gaming activity less amounts paid out as, or paid for, prizes and total operating expenses including management fees; and

(7) "Secretary" means the Secretary of the Interior.

Sec. 20. Consistent with the requirements of this Act, section 1307 of title 18, United States Code, shall apply to any gaming activity conducted by a tribe pursuant to this Act.

Sec. 21. (a) Not later than two years after the date of enactment of this Act, the Comptroller General shall conduct a study of Class III gaming on Indian lands and submit a report of that study to Congress. The study shall include—

(1) an assessment of whether the tribes, the States, or the United States is the best regulator of Class III gaming on Indian lands;

(2) an assessment of the benefits and problems which could arise if Class III gaming on Indian lands is regulated by the tribes, the States, or the United States;

(3) an analysis of the activities of the Commission, including whether the personnel and budget of the Commission is adequate to regulate Class II gaming under this Act; and

(4) an analysis of the regulatory alternatives which the Comptroller General determines are appropriate for regulating Class III gaming on Indian lands, including a recommendation of the best alternative, its

costs, and the number of personnel required for its implementation.

(b) In conducting the study under subsection (a), the Comptroller General shall consult with the Indian tribes, appropriate agencies of the United States, each State gaming control board or regulatory body, and the chief law enforcement official and other law enforcement authorities of each of the several States.

SEC. 22. In the event that any section or provision of this Act is held invalid, it is the intent of Congress that the remaining sections or provisions of this Act shall continue in full force and effect.

Passed the House of Representatives April 21, 1986.

Attest: BENJAMIN J. GUTHRIE,
Clerk.

By THOMAS E. LADD,
Assistant to the Clerk.

The **Chairman**. Our first witnesses this morning are Victoria Toensing, Deputy Assistant Attorney General of the Criminal Division of the Department of Justice, and Frank Ryan, Deputy Assistant Secretary for Indian Affairs, Trust and Economic Development of the Department of the Interior.

Before we hear these witnesses, we will hear from our two colleagues, Senator Domenici and Senator Bingaman.

We just wanted to make sure you were on stage, but then we'd go to our colleagues.

Senator Domenici, it's good to have you here.

Senator Bingaman, it's good to have you here.

Pete.

STATEMENT OF HON. PETE V. DOMENICI, U.S. SENATOR FROM NEW MEXICO

Mr. **Domenici**. Thank you very much, Mr. Chairman.

I reviewed last night and this morning the rather lengthy witness list that you have before you today, and most of them have come from very far to be heard. For myself I would ask that you permit me to insert in the record, before you close it, my detailed remarks with reference to this issue and, with your permission, I would just very briefly tell you my position and submit a detailed analysis at a later time.

The **Chairman**. We appreciate that very much, Senator. We will include your entire statement, and we will be glad to hear your summary because we intend to pay a good deal of attention to the remarks of those of you who are deeply interested in the legislation.

[Prepared statement of Senator Domenici appears in the appendix.]

Mr. **Domenici**. Mr. Chairman, we are deeply interested in the issue of Indian gaming on reservations. We have a very large Indian population in New Mexico. The New Mexico congressional delegation and our Indian people in our State have been working together very well. We probably stand to gain or lose as much or more than any State if we don't exercise our discretion in an appropriate way here at the national level.

Mr. Chairman let me also say that I did something which is perhaps dangerous for me—and I talked to a couple of the attorney generals and they indicated maybe it's dangerous for anyone—I read a couple of the U.S. Supreme Court decisions last night and this morning on this issue.

The **Chairman**. Oh, and not on Gramm-Rudman?

Mr. **Domenici**. No, no; I figured we would just wait around and see what happened there. But I read a very interesting one, the *Rice*—Director, Department of Alcohol and Beverage Control of California—v. *Rehner* case. Let me just quickly tell you my position.

First, you will hear from the New Mexico attorney general, Paul Bardacke, who is on your witness list today. I understand he speaks for the State of New Mexico as well as for the Attorneys General of the United States. I support the position of our attorney general, which he will give you in detail.

In summary, I hope we will be able to find a way to remove any cloud with reference to bingo and that it will be validated by an act of Congress. I hope that we will build into that validation of bingo the one thing that we are concerned about—all of us and our Indian people—and that is some way to make sure that it is regulated in the most proper manner so as to assure that it is not infiltrated by those who would use it in ways that none of us want or have not intended. We want to protect both the Indian people and the many non-Indians who are obviously absolutely essential for the success of bingo.

So, on bingo, it's there and operating on over 100 reservations. Obviously, if properly regulated, it can do what the Indian people want. Bingo does not seem to be to run into any of the conflicts that going beyond it would involve. On the remaining gambling and gaming issues, everything from dogracing, horseracing, to the casino-type gambling, I support the position of the attorney general of the State of New Mexico which, in essence, says the U.S. Congress unequivocally can decide the propriety and the conditions with reference to that kind of gambling and that it should be subject to the jurisdiction of each of the sovereign States in which Indian land and Indian people reside.

Having said that, I told the Indian Governors assembled in my State 2 weeks ago for a meeting with me that I thought it was going to end up serving no useful purpose for our Indian leaders to contend that this issue is a straight up-and-down issue of Indian sovereignty. I don't believe it is.

In reading the cases that the Supreme Court has decided, and particularly the one I just cited to the Chair, I believe the issue of hard gambling is not an issue of Indian sovereignty. I believe the courts could clearly decide, even without anything from any policy decision from the Congress, that this is not a traditional area of enforcement by the Indian people or a traditional area of interest, and therefore it's not a sovereignty issue but a balancing of the interests issue between the States, the tribes and the Federal Government.

Having said that, I urge that we clear up this issue once and for all. I believe that there is unequivocal authority that we can do that as a Congress. I think we should. I don't believe we ought to wait another year or two to see how it all evolves in the courts, because I believe they are left without direction from the policymaking branch that has the absolute authority to determine national Indian gambling policy.

I thank the Chairman for permitting me to testify today. He knows all the reasons for concern about hard gambling. They are stated in his opening remarks. We also understand the need for revenues to the Indian people.

In summary, I really don't believe the American people, the people within the sovereign States, on the issue of hard gambling will really consider this to be a sovereignty issue. I believe they will consider it to be an issue of regulating all of the people within a State on a very, very serious issue called hard gambling. So I regret that it becomes a sovereignty issue. I don't think it has to be at all. I hope the Indian people understand that it probably will not so be determined by the courts, and we ought to go ahead and legislate.

I thank you very much, Mr. Chairman.

The CHAIRMAN. Thank you very much, Senator, for sharing your views with us. We appreciate your taking the time to do it.

Senator Bingaman.

STATEMENT OF HON. JEFF BINGAMAN, U.S. SENATOR FROM NEW MEXICO

Mr. BINGAMAN. Mr. Chairman, I will also submit a detailed statement for the record if I could.

The CHAIRMAN. We will be glad to have that statement, and it will appear in its entirety just as though you had uttered every word of it.

[Prepared statement of Senator Bingaman appears in the appendix.]

Mr. BINGAMAN. Terrific. I appreciate that. I will read it with great interest. [Laughter.]

Let me just summarize.

The CHAIRMAN. And we hope he will, too.

Mr. BINGAMAN. Right. I am sure he will.

Let me summarize my position also. I agree that this is an important issue. It's one that the Congress should resolve and not just leave for a future court decision. I think, left unaddressed by the Congress, it will remain a source of unending litigation. I think really several of the pieces of legislation that have been proposed in this area would promise a great deal of litigation in the future because they would not come to grips with the real issue.

I also support the position of the State of New Mexico, as expressed by Attorney General Paul Bardacke. I think he has a well-reasoned position. When I was attorney general, I pursued basically the same position in connection with the questions that came before me in that office. I believed the position was right then, I believe it's still right, and I would urge the committee to seriously consider that and, hopefully, to pass legislation later this year which would be consistent with that position.

The CHAIRMAN. Thank you very much, Senator. We appreciate your appearing here.

Mr. BINGAMAN. Thank you, Mr. Chairman.

The CHAIRMAN. We will next hear from Ms. Toensing, from the Justice Department.

Let me assure you that we have your statements. They will appear in the record as though you had uttered every word. You can summarize them in any way you wish.

STATEMENT OF VICTORIA TOENSING, DEPUTY ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION, DEPARTMENT OF JUSTICE, WASHINGTON, DC

Ms. TOENSING. I take the hint, Senator. I have already prepared a much shorter version of my statement, and I appreciate your putting my whole statement in the record.

Mr. Chairman, there are three bills pending, one passed by the other body, H.R. 1920; one sponsored by Senator DeConcini, S. 902;

and one drafted after much work and discussion by the Departments of Justice and the Interior. The number of that bill is S. 2557.

Not surprisingly, I strongly support S. 2557, and I welcome the bipartisan support of the two Senators from New Mexico. We know the attorney general from New Mexico's statements will show that strong support.

I support this bill for a very good reason. The bottom line is this: Only our bill has the controls necessary to regulate an industry involving large sums of cash and with such lucrative peripheral service industries that it is extremely likely to attract organized crime and other criminal elements.

The present status of the law regarding gambling on Indian reservations is that high-stakes gambling thrives mainly unlicensed and unregulated, so presently there is no protection either for the tribes or for their customers. Certain appellate court decisions have held that if a State permits gambling with restrictions—for instance, blackjack with a $10 limit and for charity events only—then that game of blackjack is permitted in Indian country without the restrictions. Thus, blackjack can be played on an Indian reservation with a limitless pot with no rules.

Only if the type of gambling is prohibited absolutely by the State can it be prohibited on the Indian reservation. For example, Utah permits no gambling; therefore, there is no gambling on Indian reservations in Utah.

States that permit gambling regulate it strictly. Even so, criminal elements have found ways to skim profits or to cheat customers. It is the nature of the enterprise that requires close regulation and control. We have no evidence that Indian-operated gambling is any more susceptible to corruption than any other type of gambling, nor do we have any reason to believe that it is any less so.

Let me go through some of the main provisions of the legislation, comparing the Interior and Justice proposals with the House bill. It is my understanding, Mr. Chairman, that S. 902 was introduced mainly for discussion and does not address all the issues it would if it were really a specific legislative proposal. So I will not be comparing that in any depth.

I would like to outline the various issues that arose as we organized the methods of regulating gambling on Indian reservations. The first issue we addressed was the types of gambling to be controlled. In our joint Department of the Interior and Justice bill, only bingo would be permitted with the small exception of ceremonial gambling and gambling between Indians only. All other types of gambling would be controlled by State law. Only in the five States which do not permit gambling whatsoever would there be no gambling on Indian reservations.

By contrast, H.R. 1920 would allow bingo, but bingo is defined much more broadly to include pull tabs and punchboards, thereby authorizing instant lotteries. Also, the House bill would permit all other types of gambling already in existence. It places a 4-year moratorium on any tribe starting a new kind of gambling other than bingo, while the Comptroller studies gaming operations and recommends how they should be regulated. During that 4-year moratorium, however, there would still be unregulated or dual State-Federal-regulated gambling.

No Federal commission, Mr. Chairman, can regulate all types of gambling. It would be difficult enough to regulate one type, bingo, among the many tribes. Bingo is the most prevalent type. But the House bill asks that a commission be capable of regulating bingo, casino gambling, parimutuel dog and horseracing, and lotteries. That task is too large for a commission that is mostly a part-time commission. That brings me to the next issue, which is the respective commissions' structures and power.

Our bill has a full-time commission of three persons, two appointed by the Department of the Interior, one appointed by the Department of Justice. The members of our commission would be prohibited from receiving compensation from any other Federal, State, tribal, or nongovernmental office. Our commission has the power to license bingo operations and to license individual employees.

The House bill, by contrast, is not full-time, except for the Chair. Its seven other members would be paid equivalent to a GS-18 for every day they worked. Let's look at that composition. Five members, five out of eight members, would be chosen from a list provided by the tribes engaged in gambling. Thus, the persons being regulated choose the majority of the regulators. The House commission is, in effect, subservient to the tribes. It is subservient to the very tribes that they are to be overlooking.

Even more troublesome is the fact that the commission, that is, any member of the commission except for the Chair, is subject to removal by a majority of the other commissioners. That includes the commissioner appointed by the Attorney General and the commissioner appointed by the Secretary of the Interior to represent interests of the States.

Staffing: The legislation urged by the Departments of the Interior and Justice would require personnel to be appointed subject to title V, the competitive service that we all know in Government, and to receive a dollar amount at an appropriate rate for the work level.

The House bill allows the Chair to appoint all the staff, except for the general counsel, without regard to the civil service. Their pay would be set without any regard to the established GS rates. The only requirement, the only maximum, is that no one receive compensation above GS-17.

Why shouldn't persons who work for the Indian gambling commission have to show the same level of competency for their pay that other Federal employees must show?

The structure that I have just described in the House bill is ripe for abuse in a normal setting, but it is intolerable for a gambling commission which, like Caesar's wife, should be above and beyond suspicion.

Funding: The Interior and Justice Department bill does not want the taxpayer to pay for gambling on Indian reservations. Only a very limited amount of Federal tax money will be needed to regulate this enterprise. Let me rephrase that: There will be no collection of Federal taxes on the Indian gambling enterprise; only a very limited amount of our tax money should be paid out in order to regulate it.

In the Interior and Justice bill, we took every step we could to minimize this amount of Federal taxpayer money. Only the initial startup costs for the first year, the cost of writing the regulations, and the salaries of the three commissioners would be subject to Federal tax appropriation. We decided we had to include the start-up costs, because it would not be feasible to assess the tribes as we were still writing the regulations.

We thought Federal funds should pay the commissioners' salaries because we did not want those regulated to pay the salaries of their regulators. The Interior-Justice Departments bill has a formula whereby all the tribes who are being regulated pay for the remainder of the costs of the regulating commission, like the gambling interests do in the States of Nevada and New Jersey.

However, the House bill provides that three-fourths of the budget be paid from tribal assessments and one-fourth be paid for by the American taxpayer. There is a maximum assessment, though, of 2.5 percent of the tribes' gross revenues. If there is a gap between the assessments and the costs, the taxpayer will have to fill it with Federal tax money.

Mr. Chairman, I have outlined what I think are some of the main issues and contrasted our bill with the House bill to show that the bottom line is that this kind of enterprise needs to be regulated, and it is S. 2557 which best does that.

[Prepared statement of Ms. Toensing appears in the appendix.]

The **CHAIRMAN**. Thank you very much.

Before we proceed to questions, I would like to have Mr. Ryan's testimony as well.

Let me assure you, Mr. Ryan, that we have a copy of your testimony, and it will be included in the record as though you uttered every word. If you could summarize, it would leave more time for questions.

STATEMENT OF FRANK RYAN, DEPUTY ASSISTANT SECRETARY FOR INDIAN AFFAIRS, TRUST AND ECONOMIC DEVELOPMENT, DEPARTMENT OF THE INTERIOR, WASHINGTON, DC

Mr. **RYAN**. Thank you, Mr. Chairman. I will dispense with reading my prepared statement. I would like to begin by saying that the Department of the Interior supports this bill very strongly and that we are in agreement with the testimony that has been provided by the Department of Justice.

The record, the information provided to you which you read at the very beginning, identified that fact that there are 108 gambling facilities on Indian land and 104 have bingo, 93 have pull tabs or punchcards, 15 had card games, 4 has casino gambling, and 15 had other gambling activities.

The concern that the Department of the Interior has is that we do support the general proposition that Indian tribes are possessed of inherent attributes of sovereignty and that we do believe that there is a legitimate role within the structure of this republic for them to exercise authority in government themselves.

However, we are also concerned about the Federal responsibility, and at various times in the past Congress has acted to deal with issues where the health or safety issue or some danger threatened Indians or Indian tribes; for example, the application of health and sanitation laws to Indian reservations, the extension of State compulsory school attendance laws and so forth.

I think we have a concern that Indian tribes be protected as they go about exercising their powers of government insofar as they engage in bingo. We also believe that most of the tribes and organizations, as they have attempted to go about developing these bingo games, have attempted to do it in a responsible way. But nevertheless, we do have a fear and, I think, a very serious concern that there is a present danger where hard gambling or high-stakes gambling may be chosen as a development path by tribes because of the fact that that type of gambling is susceptible to influence or corruption.

One of the last things that we want to see at the Department of the Interior is some Indian tribe effectively being taken over or managed by outside elements which are actually just using an Indian reservation for its own personal or private gain, looking for a haven to market and to benefit from, but in an activity which may really be beyond the power of a tribe to control or to deal with successfully.

We feel that we have a responsibility to Indian people and to Indian tribes, and we think that this possibility is real, and what we believe is that we should do something about it and that doing something about it would be to create an active enforcement or protective mechanism.

The H.R. 1920 creates a commission, the majority of which is really made up of the Indian gaming industry. The majority membership of that commission is really a commission where the industry regulates itself. I just ask the question—since you quoted "Caesar's wife"—I ask the question, "Quis Custodias custodiat"—"Who guards the guardians?" If you have a bill where you don't provide for those types of checks and balances, then you create possibilities for the appearance of enforcement and regulation, and what you end up doing, I think, is contributing to a situation where there can be an actual frustration of expectation by Indian tribes, by Indian people, and by the public who go to these games.

We want to permit and to support Indian bingo as a matter of Federal policy, and we are not offended by that as we have defined bingo in S. 2557. We do oppose State control over bingo because we think that it would have the result of driving Indian bingo out of business. We do recognize the fact that these bingo operations in many cases are making a positive contribution insofar as they provide a source of revenue to deal with other important social and economic needs.

However, we believe that there is a serious important role for the Federal Government to play in providing help and protection here by having a strong commission which would be able to oversee and to investigate people who come to town and say, "Let me run this here and I will give you a million bucks," and God only knows where they came from; to conduct audits, because people in the back room may be skimming profits off and may have bribed certain people. Indians as well as other people are susceptible to the abuses of criminal elements, and what we want to do is to minimize the possibilities and the probabilities that our people will be subjected to.

Therefore, we recognize that there are economic benefits here, but we feel that the need for some strong regulation is based upon a concern for proper law enforcement to protect Indian society. For that reason, the reservation strongly supports S. 2557. Thank you.

[Prepared statement of Mr. Ryan appears in the appendix.]

Mr. DECONCINI. Thank you very much. I appreciate the chairman standing aside briefly.

Does the chairman have questions?

Mr. TAYLOR. We do, Senator.

Mr. DECONCINI. With the exception of the traditional and ceremonial games of bingo, the administration proposal would extend State law and State regulatory authority to all gambling activities within Indian country. With the exception of Public Law 83-280 and three earlier statutes directed to New York, Kansas, and Iowa, the chairman is unaware of any Federal statute extending State criminal laws to Indians within Indian reservations.

Would you agree that as a general proposition the United States should continue to exercise primary jurisdiction within Indian country?

Ms. TOENSING. Yes.

Mr. DECONCINI. OK. If State law is extended to class III games, as provided in the administration proposal, what effects will that have on the ability of the tribes to be competitive and operate such games?

Ms. TOENSING. Well, what it's doing is putting the tribes in the same position as everybody else. As I understand, it's a highly competitive arena, and I am sure if I were trying to get a license to participate in games, that I would have as difficult a time doing that as anyone else. It's competitive, and there are only a few slots available in several enterprises such as the parimutuel dogracing or the horseracing. I assume that the States did that because they could only regulate so many enterprises.

Mr. DECONCINI. Aren't you really, in essence, shutting out the native Americans from probably being able to compete in that class III?

Ms. TOENSING. Senator, we discussed this, and we don't feel that they are being shut out any more than all the other people who are trying to get such a license. Certainly, if the tribes were similarly situated with someone who got a license, I would think that some action could lie on an equal-protection or discrimination basis.

Mr. DECONCINI. You think the court system is adequate if, in fact, native Americans felt they were shut out without a due hearing and a real opportunity to present their justification of why they now should be granted a license?

Ms. TOENSING. I would hope so, Senator.

Mr. DECONCINI. That is my own problem I have. I am concerned about proliferation here also, and I feel that a gaming commission could be instructed to take that into consideration. But in the State of Arizona, I suspect that there is no way that the State licensing agency would grant any more or they would have already granted some to non-Indians, because they are very careful on that, and properly so. It leaves me in a dilemma.

Mr. Chairman, I will give back the microphone to you.

If I could, may I introduce at the appropriate place my opening remarks on this legislation?

The CHAIRMAN. Senator, we will put your opening remarks immediately following my opening remarks, if that is all right with you.

Mr. DECONCINI. That would be quite satisfactory, Mr. Chairman. Thank you.

The CHAIRMAN. Now, Mr. Ryan, do you agree with the statements from the Justice Department on these two questions?

Mr. RYAN. Pardon? I didn't hear the last part of the question.

The CHAIRMAN. Do you agree with the answers from the Justice Department on the two questions the Senator asked?

Mr. RYAN. Yes; I do.

The CHAIRMAN. All right. Now, your bill proposes a very elaborate commission and enforcement mechanism at a pretty high cost of operation: up to 5 percent of the gross revenues as we study it. It would appear that most of the Indian bingo games are for fairly small stakes, even though they do exceed State pot limits. Shouldn't there be a distinction in the degree of regulation between these small-stakes games from the genuinely large-stakes games?

Mr. RYAN. There is a possibility for making that distinction in terms of assessing costs in the commission. The commission would be able to take a look at net income or gross revenue and perhaps come up with a sliding scale.

The CHAIRMAN. Do you feel that we ought to put that sliding scale into the bill so that we don't wait for the regulators to maybe do it or maybe not do it?

Mr. RYAN. Well, I don't believe that the regulators would assess a fee which would put any of these small bingo operations out of business.

The CHAIRMAN. Well, wouldn't this help hold down the size and cost of the commission?

Mr. RYAN. Wouldn't what hold down the size and the cost? Their requiring a regulation that it be the same fee, same assessment across the board?

The CHAIRMAN. No; recognizing that there is a difference between the small-stakes games and the large-stakes games, the degree of regulation. If you're going to regulate a bingo game with three or four people, that's one thing. If it's for stakes that run to tens of thousands of dollars, or if its for stakes that run to $100 or $200, it's another thing.

Ms. TOENSING. Mr. Chairman, could I answer two of those points?

The CHAIRMAN. Well, I am anticipating that with both of you here, you interact, and if you don't answer the question, you accede to the answer of the others.

Ms. TOENSING. Adoption by omission, silence, or something.

The CHAIRMAN. Absolutely. You are here to speak up and make a record, and if one of you sits silent, we assume that you agree with the other, because you both speak for the administration.

Ms. TOENSING. Well, we're not disagreeing, but I would just like to make a couple of points on the bill.

The CHAIRMAN. Fine.

Ms. TOENSING. I have been living with it for about 1½ years. We think that we provided that flexibility in the bill, and that if you put certain specific numbers in the bill, then you haven't given the commission the necessary flexibility. The provision there is that the commission can charge less for those tribes who are making less, and we would expect the commission to do that. But we wanted them to have flexibility to see how profits really are being handled.

We couldn't get information from the tribes as we tried to prepare this. We couldn't get information on how the tribes were making money and what kind of profits were coming, because they said that they did not have to provide it. So we cound not get that information. Only when a commission is established will that information be available for them to decide how they should specifically do it, and we wanted to leave flexibility there.

There is another point where we think that we have looked only to those who are really costing the commission a lot to pay for it. When a tribe wants to be licensed, that investigation, that background investigation by the commission, will be paid for by the tribe as it is in Nevada, for example. For those tribes——

The CHAIRMAN. In other words, the background information is going to be paid for by the tribe in addition to the 5 percent surcharge?

Ms. TOENSING. Yes; as I understand it. Yes.

The CHAIRMAN. Now, aside from the two instances that you note in your testimony, one of which involved an ex-Congressman and was a case of bribery, what evidence do you have that organized crime has gotten involved in tribal gaming operations?

Ms. TOENSING. Mr. Chairman, I have been testifying for over 1 year now that we do not see organized crime in Indian gambling at this stage. We have disorganized crime in the gambling situation, just like in other kinds of situations where we have dishonest people who have tried to get in there.

But I have always said that organized crime's modus operandi is that they're going to wait until it's a stable industry. Right now it's in flux. Nobody knows what's going to happen with the legislation, with the Supreme Court, et cetera. The FBI has pointed out, that the history of organized crime shows that it waits until there is stability, and only then does it proceed. But we are also seeing other kinds of disorganized crime that need to be addressed.

The CHAIRMAN. Well, a major premise for your recommendation that class III gaming be put under State jurisdiction is the variance in laws from one State to another. It's been suggested that the Federal Government could retain jurisdiction over this category of games in the Indian gaming commission but simply contract with the various States for enforcement of the tribal and Federal laws. Wouldn't this solve the problem?

Ms. TOENSING. I think you're putting an extra layer of bureaucracy there and it's because there are so many layers—the 50 different States—that we think each State should really address its own laws because only they are experienced to do it. Why put another level of bureaucracy in there? Then you are just tripping over yourselves.

The CHAIRMAN. I am not tripping over myself. I am trying to go along with your suggestion that class III gaming be put under State jurisdiction.

Ms. TOENSING. Well, let me correct that to say we would be tripping over ourselves.

The CHAIRMAN. You state the various States have different laws. Obviously, the various States have different laws. We're trying to find a way of solving that problem when we're writing the law.

Ms. TOENSING. That's correct.

The CHAIRMAN. Now, you recommend that pull tabs and punchcards be treated as a class III activity. It's my understanding the tribes are currently deriving a substantial part of revenues from these games, up to 50 percent in some places. Have you made any survey of the amount funds these games are generating?

Ms. TOENSING. We can't, Mr. Chairman. They won't tell us.

The CHAIRMAN. Well, let me ask your colleague.

Don't you have ways of finding out what funds these games are generating?

Mr. RYAN. Well, the Bureau of Indian Affairs did a survey in 1985, and then earlier this year went to update it. It did get some information, but we don't, to my knowledge, have a statistical breakout of income for type of game at any particular location. That's the answer to the survey.

With respect to don't we have ways of finding out, God only knows what we would—I mean, we don't have the authority, that I know of, to conduct an audit of gaming to be able to determine precisely from what source that income—what type of game that income——

The CHAIRMAN. Well, I can't believe you were stonewalled by every tribe if you made a legitimate effort to gather this information.

Ms. TOENSING. The position of the tribes, as I was told by the Interior when I wanted all this information over 1 year ago, was that if a tribe wanted to tell, that was their business but if they didn't want to tell, there was no power to make them do so.

Mr. DECONCINI. Would the Chairman yield?

The CHAIRMAN. I would be glad.

Mr. DECONCINI. I would like to just followup on that.

Mr. Ryan, has a survey been made?

Mr. RYAN. Yes, sir; I can introduce that survey into the record, what we have.

Mr. DECONCINI. Yes; and can you tell us when the survey was made? 1985 or 1984 or——

Mr. RYAN. It was made in 1985. I am not exactly sure of the——

Mr. DECONCINI. Was it a general survey to every tribe?

Mr. RYAN. I believe so.

Mr. DECONCINI. Could you find out for us if it was for every tribe, what percentage responded at all, what percentage gave you the information you sought?

Mr. RYAN. Yes, sir.

Mr. DECONCINI. I would like to know that and which ones refused to give you that information.

[Information to be furnished appears in the appendix.]

Mr. DeConcini. The reason I ask that is because to me that may have some influence on this Senator. We would need to take that into consideration to be able to acquire that information if we do pass either the administration's bill here or some bill, so that certainly the commission and also the BIA would have available that type of information. I think that's very, very important to have, and I think puts us at a disadvantage here of knowing whether or not the Chairman's question as to 5 percent is a real figure. It may be too much for bingo and it may not be enough for parimutuel.

Thank you, Mr. Chairman.

The Chairman. Thank you. We appreciate your testimony and your candor in response to the questions.

Our next witnesses are Hon. Brian McKay, the attorney general of the State of Nevada, and Hon. Paul Bardacke, the attorney general of the State of New Mexico.

Let me ask Senator DeConcini, if he would, to conduct the hearing for 1 minute. I am visiting with a couple of people from North Dakota.

Mr. DeConcini [presiding]. I would be glad to.

Very good, Attorney General McKay, you may proceed.

STATEMENT OF HON. BRIAN McKAY, ATTORNEY GENERAL, STATE OF NEVADA, CARSON CITY, NV

Mr. McKay. Mr. Chairman, Senator DeConcini, my name is Brian McKay. I am the attorney general for the State of Nevada, and I am here to offer testimony in oppositon to S. 902 and H.R. 1920 and in favor of S. 2557, both specifically from Nevada's perspective and more generally by reemphasizing the official position of the Conference of Western Attorneys General and the National Association of Attorneys General. That position is reflected by the resolutions adopted by both organization and are attached as exhibits to my prepared testimony.

In sum, those resolutions strongly support the concept that the jurisdiction to regulate Indian gambling be vested solely with the States.

Nevada stands in the unique position with respect to the issue of Indian gaming and its regulation. During the past 55 years Nevada has enjoyed the many benefits and at times suffered the unpleasant side effects of legalized casino gambling. Inevitably, we Nevadans have learned that legalized gambling can only serve the long-term interests of the community when it is strictly regulated. Our efforts at gaming regulation have resulted in the development of a just and effective mechanism for policing our major industry.

Unlike New Jersey, Nevada has been favored by a lengthy association with a number of economically active Indian tribes living within our geographical boundaries. Commercial gaming, however, has only recently attracted the interest of any of these tribes as a potential source of revenue. The question that obviously arises is what regulatory mechanism will be utilized: one proven and already in place, or an entirely new system.

My concern with the House bill and S. 902's answer is severalfold. First, given the initial lag in effectiveness which occurs whenever a new regulatory system is implemented, it must be assumed that tribal regulators and the proposed new regional Indian gaming commissions would be placed from the very beginning in the uneviable position of playing catchup ball to the ever-changing schemes devised to place criminal organizations at the receiving end of gaming revenues.

Second, S. 902 makes this task infinitely more difficult by providing for self-regulation by the Indian tribes themselves. The Secretary of the Interior and even the regional Indian gaming commissions would have only limited financial resources or personnel to oversee the regulatory activities of the individual tribal units.

Based on our experience, I believe that this self-regulatory scheme would simply not be able to prevent either infiltration by national organized crime groups or purely local corruption. Similarly, I believe it would interface with the ability of State regulators to control the influence of these criminal and corrputive elements outside Indian lands. Once a criminal organization can begin skimming the revenue of business, it must find other investment opportunities for those funds. Because they are also cash-intensive businesses, it is natural that State-regulated gaming operations would be important secondary targets for the investment of funds generated by skimming at Indian gaming establishments.

A third major shortcoming of S. 902 is found in its simplistic approach to the very complex problem of criminal infiltration into gaming establishments. This is highlighted by the bill's overriding concern with protecting only the formal proprietary interest of Indian tribes in gaming businesses without regard to the many devices to hide true control over an operation. It does not matter that the net revenues from tribal gaming operations may only be used for tribal purposes if there are little or no net revenues because of illegal and exorbitant costs of doing business.

S. 902 also did not appear to provide the manpower or the financial resources necessary to ensure that active onsite regulation will be provided by the Secretary of the Interior, the regional Indian gaming commissions, or even the individual tribes.

In my view, S. 902 is an attempt to sidestep the clear interests States have in not only prohibiting but also regulating all gaming activities within their borders which impact upon their economies and citizens. It is clear that modern Indian gaming is not directed toward tribe members. It is meant to attract large numbers of non-Indians from outside the reservation and the State. It is run primarily by non-Indians in the contractual employ of the proprietary tribe. S. 902 itself anticipates that this sort of non-Indian management arrangement will be a continuing norm.

On the other hand, I believe that the newly proposed administration bill, S. 2557, on Indian gaming makes an important effort to come to grips with the States' concerns over Federal or tribal regulation of Indian gaming. It would leave the regulation of commercial bingo on Indian lands to a full-time commission located in the Department of the Interior except in the five States which ban bingo. All other gaming except that which is only ceremonial in nature would be left to the regulation of the States.

In closing, I want to state emphatically that Nevada is not opposed to gaming on Indian lands. At its core, Indian gaming is no more difficult to regulate than gaming conducted by non-Indians. Certainly, Indians are not any more prone to corruption than are non-Indians.

In our experience, however, we have found that any form of gaming is very difficult to regulate. In Nevada this regulation has required an enormous financial and manpower commitment which S. 902 does not even begin to contemplate.

Thank you.

[Prepared statement of Mr. McKay appears in the appendix.]

Mr. DECONCINI. Mr. McKay, thank you.

Mr. Bardacke.

STATEMENT OF HON. PAUL BARDACKE, ATTORNEY GENERAL, STATE OF NEW MEXICO, SANTA FE, NM

Mr. BARDACKE. Mr. Chairman, Senator DeConcini, my name is Paul Bardacke, and I am the attorney general of New Mexico. I want to thank this committee for the opportunity to appear before it and give you my views. I would also like to thank the National Association of Attorneys General that asked me to speak on their behalf as well.

I have submitted written testimony to this committee, and that written testimony, in part, points up a number of the problems that I see with both H.R. 1920 and S. 902. I don't want to take this committee's time to discuss all of those problems. But I would like to say that I believe that they prevent both of those bills from accomplishing much of anything.

The administration proposal, S. 2557, closes those loopholes, removes the ambiguities, and from a technical standpoint as well as a substantive standpoint, represents a better bill. Passage of S. 902 or H.R. 1920 would lead to a new round of litigation as those bills' ambiguities and loopholes are attempted to be clarified. I believe the clarity and precision in the administration bill will end litigation over gambling.

Aside from technical issues, there are really three policy issues that need resolution. First, should Congress pass legislation, or should it be left to the courts? Second, how much gambling as a policy matter should be allowed on Indian reservations? And third, who should have the jurisdiction to enforce gambling laws and regulations on Indian reservations?

I think the first issue is easy. I feel that Congress has an obligation to deal with this issue. It is Congress which, by the Constitution, is given control over Indian tribes. I would gather that the fact that we're here is recognition of the need for action in Congress.

The second issue, however, is the most difficult—which forms of gambling should be allowed. Both S. 902 and H.R. 1920 duck the issue. They avoid it completely. S. 902 leaves it to the courts, and H.R. 1920 delays the decision for 4 years. It makes no indication of what kinds of gambling at this time are legal or illegal.

The administration bill, on the other hand, says bingo is OK but no other form of gambling will be allowed which in any way differs from the gambling allowed in the separate sovereign States. I commend the administration proposal because it deals with this tough issue which the other bills duck, and this is the central issue regarding Indian gambling. The issue is one of economics versus law enforcement concerns and social concerns.

I think it's clear that the more vice that Congress will allow Indians to offer to non-Indians, the more profit tribes will earn. If tribes were allowed to offer casinos, I have no doubt that poverty can be wiped out on those Indian reservations that are near population centers. However, the law enforcement costs and the social costs under such proposals I believe to be unacceptable. I think it is possible to say, however, that any harm from bingo is outweighed by the economic benefits to the tribes. Presently, I think this is true in New Mexico.

Stories I have heard about problems in other States may mean that high-stakes Indian bingo will not prove to be an acceptable way to help reservation economics. I think the administration proposal, however, is reasonable, but I would ask that Congress watch Indian bingo to see if problems arise which increase the law enforcement and social costs too greatly.

I do not feel that allowing more exotic forms of gambling on reservations to help tribal economics can be justified as an economic development program. The cost is too high.

The final issue concerns who should have jurisdiction to enforce gambling laws. In the past I have taken the position that the Federal Government and not the States should have such jurisdiction on reservations in New Mexico. New Mexico never assumed general criminal jurisdiction over reservations pursuant to Public Law 83-280. Since the Federal Government has general criminal jurisdiction and is already on the reservations enforcing criminal laws, it seemed to me in the past that the best use of resources is to have gambling under Federal jurisdiction.

However, I now recognize that where a State has a complex system for regulating gambling as we do, for example, in New Mexico, in the horseracing industry, that it is a waste of resources to have the Federal Government have to create a parallel regulatory mechanism.

I therefore feel that S. 2557 that proposes concurrent State-Federal jurisdiction is not only reasonable but it is a practical compromise.

Finally, I would like to point out that bingo is not an economic cure-all for Indians. In New Mexico there are probably 20 tribes that are located too far from population centers to sustain a profitable game. So no matter what form of gambling is eventually allowed on reservations, serious economic problems will still exist on Indian reservations. We must find a more acceptable method to improve reservation economics than by simply allowing tribes to sell what the States have found appropriate to prohibit.

Again I thank this committee for the opportunity to speak.

[Prepared statement of Mr. Bardacke appears in the appendix.]

Mr. DeConcini. Gentlemen, thank you. Your full testimony will be printed in the record, Mr. Bardacke and Mr. McKay if you have other than what you testified.

Due to time, I have a lot of questions that I may ask you over the due course. I respect your positions highly both individually for the work you've done in your States.

I do want to ask you, Mr. McKay. It's my understanding that Indian tribes in Nevada are currently at a disadvantage insofar as their ability to operate gambling. Aside from the Federal statute that prohibits mechanical gaming devices on Indian reservations, are there other restrictions that preclude tribes from gaming activity?

Mr. McKAY. Senator, there are not. They are just as able to come before the State gaming control boards and gaming commissions to seek licensing as anybody else.

Mr. DECONCINI. Have there been any that have come before?

Mr. McKAY. No, sir; there have not.

Mr. DECONCINI. Then so the only disadvantage they have is the Federal prohibition for mechanical——

Mr. McKAY. For slot machines. That is correct, Senator DeConcini.

Mr. DECONCINI. Is it fair to say that that is a substantial disadvantage, in your judgment?

Mr. McKAY. Yes; it is a significant disadvantage, yes, Senator.

Mr. DECONCINI. If Nevada—I really believe that Nevada, and perhaps New Jersey—they don't seem to have a whole lot of native Americans in New Jersey. You do.

Mr. McKAY. Yes, sir.

Mr. DECONCINI. If Nevada was exempt from this due to the justification of this being a major industry or one of the major industries in your State, what is your feeling about the bill with that kind of an exclusion in it?

Mr. McKAY. S. 902?

Mr. DECONCINI. Yes.

Mr. McKAY. Well, from purely a State of Nevada's point of view, it would remove a number of the concerns that we have. From the Attorney General's point of view overall, we still have the issue, the basic issue, of jurisdiction and whether it should lie with the State or with the Federal Government. I still personally feel that the jurisdiction to regulate should lie with the State.

Mr. DECONCINI. Mr. Bardacke, I sympathize with the position that the Attorney Generals take, and if I were one I am quite sure I would lend my way in that direction. What concerns me about is that if we adopted your view, at least in the State of Arizona—and I would like your opinion in the State of New Mexico—the chances are of a native American or an Indian tribe being able to get a license to have parimutual horseracing or dogracing, which is permitted in the State of Arizona, is very unlikely because they have already given out what as to what they believe is the public interest under the legislative mandate. Is that the same observation you would share with us from the State of New Mexico?

Mr. BARDACKE. No; Senator DeConcini. I believe that if an Indian tribe wanted to have horseracing, parimutuel wagering on horseracing in New Mexico, that the racing commission would consider their application. But I do believe that if the racing commission could regulate parimutuel horseracing designed for non-Indians on Indian land the same way they regulate horseracing for non-Indians on non-Indian land, that the Indian tribes would not be interested in having horseracing.

I think the great thing about the administration bill is that it legalizes the bingo games, which are a tremendous source of revenue for the Indian tribes; but it says that with respect to other gambling, that Indians and non-Indians should be treated alike with respect to the legality.

For instance, in New Mexico we've got the issue of dogracing. Dogracing is illegal in New Mexico. In Arizona, I believe, it's permitted. But in New Mexico dogracing is illegal for non-Indians to have dogracing tracks, for a variety of reasons.

There is a proposal by one of the Pueblos to have a dogracing track. I think it's only reasonable that if that dogracing track is designed for non-Indians to come onto Indian land and wager, that it should be regulated by the same State laws.

Mr. **DeConcini**. Well, Mr. Bardacke, I happen to agree with you. I just don't think it's in the public interest to let the Indians there to do something that the States can't do. What does bother me is what if they wanted to do horseracing. That is legal in New Mexico.

Mr. **Bardacke**. Yes.

Mr. **DeConcini**. And your opinion is—and I realize you can't say what the gaming commission or whatever it is that regulates that in New Mexico would do—but in your judgment, if that Indian tribe came in and wanted to do horseracing, they would probably grant them a license to do so, assuming they could show the financial responsibility.

Mr. **Bardacke**. Absolutely, Senator.

Mr. **DeConcini**. Because if there were some assurance of that, it would weigh heavy on this Senator on the fact that they would have an opportunity to compete. But I am so concerned, at least in the State of Arizona, that the public interest is to restrict it substantially and not let the free market of competition have three or four race tracks trying to see who can do the best during that period of months that they're permitted to race on, and so they would deny a native American application on the basis that the public interest is already served. That puts the native Americans, at a big disadvantage because the door is already shut to them for any kind of gaming in the class III area, even if they wanted to be subject to the State law.

Mr. **Bardacke**. In New Mexico, Senator, last year the racing commission offered two new licenses: One in Farmington, which is up in our northwest quadrant. That track just got going last year.

Mr. **DeConcini**. Is that on Indian land?

Mr. **Bardacke**. No.

Mr. **DeConcini**. No?

Mr. **Bardacke**. But what I am saying is I think——

Mr. **DeConcini**. It would have been.

Mr. **Bardacke**. It could have been.

Mr. **DeConcini**. Yes.

Mr. **Bardacke**. If the application showed the same kind of financial responsibility and the same willingness to be regulated by the State law affecting parimutuel horseracing. So I think that the industry is still open to new areas that seek racing applications, and it would be open to Indian as well as non-Indian alike.

Mr. DeConcini. Thank you, gentlemen. Your testimony is very helpful to us. We appreciate it.

Mr. McKay. Thank you.

Mr. Bardacke. Thank you.

Mr. DeConcini. Our next witness will be Andrew P. Miller, attorney for the American Greyhound Track Operators Association in Miami, FL; and Mr. Jay Spurrier, president-elect, National State Racing Commissioners, Lexington, KY.

Gentlemen your full statements will be printed in the Record as if read, and if you could, summarize them for us. The chairman has here a list of some 18 witnesses that we have to get through.

Mr. Miller, how are you today?

STATEMENT OF ANDREW P. MILLER, ESQ., AMERICAN GREYHOUND TRACK OPERATORS ASSOCIATION, MIAMI, FL

Mr. Miller. Senator DeConcini, it's a pleasure to be here before this committee. I represent the American Greyhound Track Operators Association, which consists of the owners and operators of some 46 greyhound tracks in this country. Greyhound racing is the sixth largest spectator sport. In 1985 the attendance was almost 24 million and some $2.7 billion was wagered, out of which State and county governments receive $188 million.

Now these tracks are all regulated by State racing commissions. There is strict supervision which is necessary to prevent unauthorized substitution of dogs and to prevent the drugging of dogs. AGTOA knows from experience that regulators must be constantly alert because otherwise criminal elements would poison the system. Untoward events at one track would affect the entire industry.

AGTOA is very concerned about unregulated tracks on Indian land. In 14 States where the tracks are operating, all but 4 have Indian groups within their boundaries. It is clear that unregulated tracks would act as a magnet for criminal elements frustrated at their lack of success at regulated tracks.

I want to emphasize that AGTOA does not oppose gambling on Indian reservations; however, such gambling needs to be just as strictly controlled as off-reservation gambling, and to have more than one set of rules applicable would be counterproductive. Commercial gambling is not a traditional Indian activity. To be economically viable, it depends almost entirely on non-Indian participation. There is no reason that the rules of the game should vary for non-Indians depending where it is in the State they do their gambling.

The controversy over the applicability of State laws to gambling on Indian lands is being litigated on an ongoing basis. For instance, the *Cabazon-Morongo* case, on an appeal by the State of California, last week was accepted by the Supreme Court, although it postponed determination of the issue of jurisdiction.

However the Supreme Court decides, even if it does so on the merits, litigation will continue as gambling increases without regulation. The result will be a circumvention of State laws relating to gambling. Moreover, the effects of such gambling are not limited to reservations and thus the States have substantial interest in seeing that the issue is addressed. The controversy cries out for legislative solution this year with the basic question being the identity of the regulator.

The approach embodied in H.R. 1920 should be rejected because it represents the nose of the Federal camel under the tent of State regulation. This is clearly reflected in the name of the proposed "National Gaming Commission," as well as in the grandfathering of certain hard-core gambling activities, while the Comptroller General studies the regulatory issue.

AGTOA says that there is no need for such a commission and no need for such a study. By contrast, S. 2557 would establish an American Indian Bingo Commission. The idea of a national body to supervise bingo, traditionally regulated at the local level, does not make a great deal of sense in the abstract. AGTOA recognizes, however, that certain tribes have opened bingo establishments which in some instances have been shielded by lower Federal courts from local regulation. Whether the Supreme Court leaves that shield in place remains to be seen. Therefore, if Congress wishes to protect these bingo establishments, their status must be defined under Federal law.

As a legislative compromise, S. 2557 is understandable. At least the States generally do not have bingo commissions. As to other types of gambling, State commissions do very well in performing their functions. Thus, if there is to be a Federal role, it should be limited to bingo because duplicative regulatory mechanisms would thereby be avoided.

The alternative, a national gaming commission as to other gaming, with the same powers as State commissions and a large staff and budget, would be inefficient. There is no reason to create a parallel regulatory system when it is obvious that State regulation is effective. Control of gambling traditionally has been an area of State responsibility. Since many States do not permit various forms of gambling, there is no justification for a national commission.

AGTOA believes that the most appropriate resolution of this issue is one which parallels that contained in 18 U.S.C. 1166. It was suggested a little earlier that the only extension of State law has been as a consequence of the adoption of Public Law 83-280. That, of course, is not strictly the case. With respect to the regulation of sales of liquor on Indian land, as Senator Domenici mentioned earlier this morning, the Supreme Court has spoken in *Rice* v. *Rehner*.

The Court found in section 1166 Congress properly delegated authority to the States to regulate the liquor traffic. It deemed such delegation appropriate because there is no tradition of Indian self-government as to liquor. The same is true with respect to commercial gambling.

Historically, the public debate over gambling has been resolved at the State level. The same is true, with one unfortunate period, as to liquor. As to the latter, State authority is now recognized in the Constitution and, although this is not true as to gambling, the principle is the same: That is, the diversity of attitudes toward gambling makes national regulation impractical.

What S. 2557 is proposing, with the exception of bingo, is squarely in accord with the report of the Commission on the Review of the National Policy Toward Gambling, whose 1976 report represents the last serious study of this question.

The Commission concluded that the Federal Government should not substitute its judgment on gambling for that of the individual States. It recognized that as to Indian reservations, Congress could delegate authority to the States. Indeed, it recognized that Congress had moved in that direction by the passage of Public Law 83-280. The Commission urged that all gambling activities on Indian land should be placed under control of applicable State law. S. 2557, with the exception of bingo, implements this recommendation.

The time has now come to adopt the Commission's position. On behalf of AGTOA, I urge this committee to take that initial step. Thank you.

[Prepared statement of Mr. Miller appears in the appendix.]

Mr. DeConcini. Thank you, Mr. Miller.

Mr. Spurrier.

STATEMENT OF JAY SPURRIER, PRESIDENT-ELECT, NATIONAL ASSOCIATION OF STATE RACING COMMISSIONERS, LEXINGTON, KY

Mr. Spurrier. Mr. Chairman and Senator DeConcini, my name is Jay Spurrier. I am president-elect of the National Association of State Racing Commissioners, and chairman of the Kentucky Harness Racing Commission. I appreciate this opportunity to speak to you today on the subject of gambling on Indian lands and present to you the view of the regulators of the legal parimutuel industry.

I would like to do so in an abbreviated statement here today, and I have entered a lengthier written statement for the record.

Wherever there is legal parimutuel gambling in North America, such is overseen and regulated by State-appointed racing commissions, nearly all of which are members of the National Association of Racing Commissioners, NASRC.

The association's membership includes the border provinces of Canada, Puerto Rico, the Bahamas, Jamaica, and all but one of the racing commissions in the United States. The association was formed in 1934 to encourage forceful and honest nationwide control of racing for the protection of the public.

Among the conditions of membership, as defined in the association's constitution and bylaws, is acceptance of the principle of reciprocity: enforcement of each other's official rulings and penalties. In a very real sense, reciprocity is the glue that holds NASRC together, for to live outside of its cover would make any jurisdiction easy prey for rulebreakers and other undesirables.

Without exception, all State racing laws provide for a racing commission, and all endow them with the power to make rules and regulations, to license tracks, to oversee the distribution of revenue, and to preserve public safety and security. All commissions are empowered to license the participants in racing: owners, trainers, jockeys, drivers, and all of those who work at the tracks.

To enforce observance of the rules, to hold hearings, summon witnesses and elicit testimony, to enforce the mandate given to them by State law, the 40 racing commissions in the United States alone last year spent $50 million for adminstrative staff, field investigators, auditors, legal counsel, and so forth, another $20 million for drug testing and research, our own most recent research estimate that the tracks themselves spent $9 million for backstretch security alone, making a total annual expenditure of $80 million to ensure against corrupt practices in the racing industry.

No other professional sport is so scrupulously regulated. It is this association's strong position that the State regulation of parimutuel sports be extended to racing on Indian lands. It is our position that to do so otherwise would put into jeopardy both the integrity of the sport and the sizable Government revenue that flows from them.

This position, long held by the racing commissioners, was reinforced as recently as last April when racing commissioners at their national convention in Lexington, KY, passed a resolution without dissent endorsing this important principle. Just as strongly, we emphasize that this policy is not to be construed as opposing the expansion of horse and greyhound racing to Indian lands.

We ask only that such racing as may be contemplated on Indian lands be subject to the rules and regulations that prevail in the State in which such gambling occurs. The operation of racing facilities outside the strict regulatory control of the States would disadvantage the Indian tribes as much as the racing industry and the public it serves. Without question, the presence of such loosely supervised, cash-intensive enterprises would be an irresistible lure to the criminal elements among us.

I have one example, and I quote from a recent Oklahoma Supreme Court decision upholding the Oklahoma horseracing commission's refusal of an operating permit: "The Commission contends that its findings that the appellee's proposed financial package lacked requisite integrity was clearly supported by substantial evidence." We agree.

Among the most relevant and significant facts shown by the record are these:

> Applicant, Oklahoma Park, Inc., was formed as an Oklahoma corporation with a total pay-in of capital of $1,001. The proposal involved 120 percent financing. A $46 million track was to be financed by a $57 million loan which would be obtained through the efforts of an employee of a foreign company located in England, Arab International Trust Company, Ltd. This company would receive the actual funds from another foreign company incorporated in the Cayman Islands. The individual investors could not be identified. The actual cash would come from secret, numbered bank accounts. The documents presented to the commission did not constitute a binding loan agreement.
>
> The loan package was put together in a major part by a convicted felon whom the unrefuted record shows to be a nationally known organized-crime figure. This organized-crime figure had extensive contracts with the applicant, and it was he who brought all the parties together. In addition to having unknown leaders, the only identified insurer of the project was represented by the felon.

It is for the protection of the Indian tribes themselves that we strongly advise that racing on Indian lands be subject to the same rules and regulations that prevail at racetracks elsewhere in the State.

Mr. Chairman, the National Association of State Racing Commissioners is grateful for being given the opportunity to present its views today. Thank you very much.

[Prepared statement of Mr. Spurrier appears in the appendix.]

Mr. DeConcini. Mr. Chairman, may I proceed with just one question here to Mr. Miller?

The Chairman. Certainly.

Mr. DeConcini. Mr. Miller, you point out in your testimony and say, "I want to make it clear that AGTOA"—your association—"does not oppose gambling on Indian reservations." That really isn't true. You do oppose gambling on Indian reservations, do you not?

Mr. Miller. Senator DeConcini, I would never make a statement which I knew to be untrue. I discussed this matter with counsel for AGTOA, and I have been told by counsel for AGTOA in Miami that they do not oppose such gambling. What they do oppose is gambling which does not have State regulation imposed on it, because of the fact that inevitably you are going to have dogs substituted, dogs drugged, and the whole industry given a black eye.

Mr. DeConcini. How do you square with the National Greyhound update quote of their June article which says:

> Credit American Greyhound Track Operators Association for leading the way for flat and harness racing in putting a long hold on Indians building race tracks on their reservations. Legislation passed by the House prohibits pari-mutuel wagering on Indian reservations for 4 years, allowing Congress time to study the situation, which is probably the first time that AGTOA had such real impact on Federal legislation.

[Material referred to appears in the appendix.]

Mr. DeConcini. Mr. Miller, I find it an insult that you would come and tell us that your association does not oppose, and then we have your update quoting your association as saying that you just won a great victory here.

I have no further questions of this witness, Mr. Chairman. He has no credibility.

I know your people in Arizona, and they have credibility with me. I am ashamed of your association.

Mr. Miller. Mr. Chairman, if I may respond to that, you, of course, are entitled to draw your own conclusions, but I was intimately involved with respect to the debate on this issue in the House of Representatives, and that was a compromise. I testified before the House committee. I said exactly the same thing before the House committee as I said here with respect to AGTOA's position.

The compromise which was worked out was a moratorium to allow the issue of who should regulate to be studied by the Comptroller General. The alternative was unregulated gambling on Indian reservations. Therefore, the fact that a moratorium has been proposed is indeed a victory for those who are concerned about the integrity of greyhound racing in this country and the integrity of the law enforcement process.

The Chairman. Mr. Spurrier, in light of the fact that State laws restrict dates and places that horseracing can occur, if we simply put horseracing by Indian tribes under State law, they simply won't be able to open any racetracks. Do you have any comment on that?

Mr. Spurrier. In my experience, which is 12 years, any applicant always receives the same opportunity. Economic factors are taken into consideration, and I would say it was the position of the National Association of Racing Commissioners that all applicants would receive the same consideration. I don't know of an instance whereby a bias has been created in our industry.

The CHAIRMAN. Now, if tribes adopted the regulatory laws substantially identical to State law and contracted with the State for enforcement, would this address your concern?

Mr. SPURRIER. I didn't understand your question.

The CHAIRMAN. If tribes adopted regulatory laws substantially identical to State law and contracted with the State for enforcement, would this address your concerns?

Mr. SPURRIER. No, sir; it wouldn't. I think that it would have to be done by the State-appointed body, and I think it would have to be done under the State law, because if there was one commission to administrate regulatory laws, there would be less chance of duplicating these laws. It would also aid in eliminating the possibility of two commissions having confliciting rules and would expedite the settlement of problems that may be crucial to the operation of parimutuel wagering.

Mr. MILLER. Mr. Chairman, if I might respond to that, I think it would create—as a former attorney general of the Commonwealth of Virginia and having some knowledge with respect to the operation of State constitutions in this area—a significant constitutional question. The States are not in the rent-a-regulator business. Even if there were no such problems, it would create a situation where one would have duplicative supervision at the Federal and State levels of gambling on Indian reservations. This would be counterproductive from the law enforcement standpoint.

On the equal-protection point that you mentioned a moment ago, you will note on page 9 of my testimony that, in accordance with AGTOA's view that it wishes to have Indians enjoy an equal opportunity to gamble on their reservations, I propose certain language clearly stating the proposition that, with respect to the consideration of any such application, they be afforded precisely the same consideration as any other applicant.

The CHAIRMAN. Senator DeConcini, do you have any other questions,

Mr. DECONCINI. I have no questions, Mr. Chairman.

The CHAIRMAN. Thank you.

Our next witnesses will be Mr. Roy Montoya—oh, I am sorry. For a minute, Senator DeConcini asked if Governor Antone of the Gila River Indian Community of Sacaton, AZ, could be brought up now. We will do that. He is accompanied by Rodney Lewis, the community attorney from Sacaton, AZ.

Mr. DECONCINI. Mr. Chairman, I appreciate that courtesy. They will not be very long. They have statements that they will put in the record.

The CHAIRMAN. Well, we can assure them that their entire statement will be in the record as though they had uttered every word of it.

Mr. DECONCINI. They can summarize.

The CHAIRMAN. That will leave more time for questions.

STATEMENT OF HON. DONALD ANTONE, GOVERNOR, GILA RIVER INDIAN COMMUNITY, SACATON, AZ, ACCOMPANIED BY RODNEY LEWIS, ESQ., COMMUNITY ATTORNEY, SACATON, AZ

Mr. ANTONE. Thank you, Mr. Chairman and Senator DeConcini. I appreciate the opportunity for allowing us to come before you to state our position on the bills that are before this committee. We have a lengthy statement that we have submitted, and as you indicated, it will be for the record.

But we would like to point out some of the key points that both of us are concerned with. First of all, Gila River is located real close to the metropolitan area of Phoenix, the city of Phoenix, and as such, our borderline is adjacent, real close, and the population there is over 2 million people. The committee should know also that our State of Arizona is very active in parimutuel wagering within the parimutuel wagering on horses, dogs, and harness racing, and the State has been receiving lucrative income from this parimutuel wagering.

Through the 1980's and onto 1984 over $1 million was spent on parimutuel wagering on dogs and horses. The State of Arizona is one of the largest States with the numbers games. In July 1, 1981, through August 31, 1985, over $336 million was wagered in lotteries. Also, in Arizona over $41 million was wagered in regulated bingo games during 1984 and 1985. Gila River simply wants to participate in this parimutuel industry by introducing a jai alai industry. We feel that this is part of our economic effort to offset some of our costs that will be cut by Federal regulation.

We would like to ask our attorney, Mr. Rod Lewis, who is with me today, to point out some of the particular problems we have with the bills that the committee is considering right now.

[Prepared statement of Mr. Antone appears in the appendix.]

Mr. LEWIS. Mr. Chairman and Senator DeConcini, I would like to direct my remarks both to H.R. 1920 and to S. 2557. We have great concerns about the treatment of class III gaming as far as H.R. 1920 is concerned, and of course the introduction of a criminal offense as far as S. 2557.

In H.R. 1920 there is a 4-year moratorium as far as parimutuel wagering in our instance is concerned. We think this is tremendously unfair. There is no provision for grandfathering in, at least, the interest of Gila River at this point.

Some background is needed in our instance. We had approved contracts, contracts approved by the Bureau of Indian Affairs pursuant to 25 U.S.C. 81 and 415. We then filed an action in the U.S. district court in Phoenix. We put the precise issue before a judge, where it remains today. There is no decision yet. Immediately prior or just prior to the arguments in district court we had a withdrawal of approval from this Assistant Secretary, who evidently disagreed with the prior Assistant Secretary. So that's our complaint.

In fairness and equity, we would like to have recognition. We should be grandfathered in and be specifically recognized as being able to engage in parimutuel wagering.

Two other points which I think are important. We are in agreement with contracts or written agreements with the State of Arizona for purchase of services as far as regulation. We have no opposition to drawing upon the expertise of the State of Arizona as far as parimutuel regulation is concerned. We want help in this area, and it's to our interest to have a good, sound, clean, honest game on the Gila River Indian Reservation.

Contrary to the statement of the people from the Greyhound Association and the Horse Racing Association, they simply don't have the understanding of Indian affairs, at least in the western part of the country, so they can make statements like "renting regulators." On Indian reservations there is some authority for the State of Arizona to come onto a reservation and enforce the criminal law. That's specifically a non-Indian versus non-Indian situations. The State of Arizona ordinarily comes onto a reservation and enforces the criminal law. It is a complex jurisdictional problem. There is precedent for it, and we have no opposition to having the State of Arizona assist us by contract for purchase of service to regulate jai alai and parimutuel wagering on the Gila River Indian Reservation.

We have no problem also with going ahead with the split which the State of Arizona uses as far as distributing revenues or the handle from parimutuel activities. If the State has 81 percent of the handle going back to the bettors, we have no opposition to having that, even in the Federal law, mandated. We want to comply with the basic requirements of parimutuel wagering in the State of Arizona.

Just to comment briefly on the administration's bill, S. 2557. We have viewed 18 U.S.C. 1166 as one of the most harmful and intrusive threats to Indian sovereignty, I believe, since the 1950's when termination and Public Law 83-280 were passed. This simply stands the state of the law on its head as far as allowing the State of Arizona or any State to prosecute Indians and Indian individuals in State court for crimes which are a matter of State law. This simply and completely erodes the sovereign status of Indian tribes, especially in a State like Arizona where the sovereign status is respected, more so than in other parts of the country. This is a tremendous threat.

We don't believe that every time that there is a problem in Indian affairs that the State solution is the answer. We think they have enough problems resolving their problems. But on the other hand, we are extremely interested in cooperating with the State in the delivery of services, and we have done so in other areas.

It seems to me that the point of the legislation ought to be aimed toward reducing or attempting to reduce some of the hostility which has existed between the States and the Indian tribes, at least in Arizona. We don't need to get into litigation every time there is a problem. We should work toward ends which will be to our mutual benefit.

We oppose section 1116, that part of the bill, as far as S. 2557 is concerned. We think this upsets the balance, the delicate jurisdictional balance, which has developed throughout the years which is embodied in the U.S. Constitution through legislation like Public Law 93-638, the Indian Self-Determination Act and, of course, through the hundreds and hundreds of court decisions which have developed through the years.

So, in short, we would like to see—we support S. 902. We are opposed to H.R. 1920 with the problem with the class III gaming. We oppose the administration bill, especially with its intrusion on the sovereign status of Indian tribes.

The CHAIRMAN. Senator DeConcini.

Mr. DECONCINI. Mr. Chairman, I don't have any questions. They lay out their particular problems very clearly to me and state their willingness to participate on the handle, I think it is important to not have an advantage over the States, and I think that is absolutely necessary if we get into the class III.

As I have discussed with the chairman of the tribe here and his attorney, we need to be sure that the enforcement, if we do it by commission or something other than the State, it's just as stringent and just as strict. So I have no questions.

I thank the Chairman for having these witnesses here.

Mr. ANTONE. Mr. Chairman, in reference to the statement that the representative from the administration has made on the budget which you requested, I can't see how the Bureau of Indian Affairs couldn't obtain the budgetary statement that you were asking for. The Bureau of Indian Affairs has jurisdiction over all budgets of most tribes, and in fact they have approval authority. Most budgets that are used by the tribes are approved by the Bureau of Indian Affairs. I don't see how they could not get any assistance from the tribes.

I think that the tribes are willing to share those budget items more than they indicated.

The CHAIRMAN. Mr. Chairman, along that line, did you respond to the survey that was sent out?

Mr. ANTONE. We have responded. The request that was asked was not in detail, and it did not spell out exactly what they wanted.

Mr. DECONCINI. Just one case.

Mr. ANTONE. It was one case.

Mr. DECONCINI. Thank you.

The CHAIRMAN. Thank you very much, gentlemen.

Mr. ANTONE. Thank you.

The CHAIRMAN. We will next hear from Mr. Roy Montoya, the tribal administrator, Santa Ana Pueblo in New Mexico; and Ms. Nora Garcia, the chairperson of Fort Mojave Indian Tribe in Nevada.

Mr. DECONCINI. Mr. Chairman.

The CHAIRMAN. Yes?

Mr. DECONCINI. Could I ask unanimous consent that the nationally renowned Update article I made reference to the previous witness be introduced and made part of the record?

The CHAIRMAN. Without objection, it will be put in the record at the point at which you made reference to it.

Mr. DECONCINI. I thank the chairman.

The CHAIRMAN. Mr. Montoya, we're glad to have you here. Let me assure you, as I have the other witnesses, that your statements we have will appear in the record as though you have given them in their entirety. You can summarize them in any way you feel appropriate.

STATEMENT OF ROY MONTOYA, TRIBAL ADMINISTRATOR, SANTA ANA PUEBLO, BERNALILLO, NM, ACCOMPANIED BY ED GABRIEL, PUEBLO REPRESENTATIVE, WASHINGTON, DC; HOWARD SHAPIRO, LEGAL REPRESENTATIVE, WASHINGTON, DC

Mr. MONTOYA. Thank you, Mr. Chairman. I have with me today Mr. Ed Gabriel, who is the representative of the Pueblo here in Washington, and Mr. Howard Shapiro, who is the legal representative of the Pueblo here in Washington. My name is Roy Montoya. I am the tribal administrator, Santa Ana Pueblo. I have been designated by the Pueblo Council to appear before you to present testimony concerning S. 902 and H.R. 1920, legislation intended to establish Federal standards and regulation on the conduct of gambling activities on Indian reservations.

This legislation is very important to the Pueblo of Santa Ana. It would affect our ability to develop tribal trust lands as determined by the tribal council and affect the outcome of Indian litigation before the Federal district court here in Washington.

Previous testimony before this committee on June 18, 1985, set forth our general concerns.

The CHAIRMAN. If you could suspend for just a minute, we are trying to—I think Senator DeConcini has had to leave. Senator Melcher has not been able to come. Senator Goldwater has not been able to come. I have a conference with the House that I am late for.

I think that what we will do—because we have a list of witnesses that is quite extensive and you have traveled from quite a ways, instead of recessing at noon and waiting to come back at 3 p.m. or 3:30 p.m., which may mean some of you will have to stay over at additional expense to you and we want to get your testimony in the record—I think that what I will do is have our chief of staff conduct the hearing so we could just keep going right through the noon hour, maximize your travel, and make sure that we don't interfere with any of you and so we can get what we want really as a complete record. You are here now, and rather than force some of you to stay over because you will miss planes going back or spend an extra night, out of courtesy to you, I think we will have the chief of staff continue the hearings.

If Senators are able to come back—and I know that two or three of the committee members are intending to come—but with the tax bill on the Senate floor, the conference with the House in the Budget Committee, which is why many of the members are not here—this is a very important piece of legislation. We want to get as much information as we can in the record.

It would appear that it would be best to continue the hearing that way. So I will have to leave in a couple of minutes, but now you may continue.

Mr. MONTOYA. Thank you, Mr. Chairman, for your consideration. As I stated before, our previous testimony before this committee on June 18, 1985, set forth our general concerns and information regarding the Pueblo of Santa Ana. In our review of the bill spending at that time, since then the House has passed H.R. 1920, as amended, which includes a moratorium which would keep the Pueblo from developing its lands and resources in a manner that has already been determined by the tribal council and in accordance with existing ordinances of the Pueblo.

We find the moratorium to be totally contrary to the existing policies of Indian self-determination and tribal self-government espoused by the Reagan administration and this Congress. It is about this concern that I wish to address you today. In addition, I want to make positive recommendations for reasonable regulation of class III gaming on Indian reservations.

At the insistence of our competitors, the American Greyhound Track Operators Association, and the State of New Mexico, the House has inserted a moratorium on any class III gaming facilities until the matter could be fully studied by Congress, a period of 4 years.

Having been involved in numerous congressional and administrative and tribal studies on various issues throughout the years and the results of those studies, we view the moratorium as nothing more than a method by which our competitors can keep us out of the business. The AGOTA does not want any tracks constructed unless their members own the tracks. We instead call for free enterprise, open competition, and fairness.

I also would like to refer to the article in the National Greyhound Update, which Senator DeConcini referred to earlier, where—that non-Indian economic interests are affecting the powers and jurisdiction of tribal governments. I also would request that a copy of this article be placed in the record.

The Pueblo Council of the Pueblo of Santa Ana has enacted legitimate and existing ordinances to regulate racing within the reservation boundaries and parimutuel wagering on that racing. This moratorium, if passed, would abrogate the ordinances of the tribe and attempt to overrule governmental actions taken by the tribal council.

A moratorium would also affect issues now pending before the Federal District Court for the District of Columbia in the case of *Santa Ana* v. *Hodel*, which will determine the legality of the Pueblo's actions and interpret applicable law and public policy as it relates to the gambling activities of parimutuel wagering.

It is extremely important that Congress leave to the courts the interpretation of these legal issues. It is dangerous and, we believe, unwise for Congress to interfere with ongoing litigation.

Congress has chosen to attempt to regulate Indian gambling. We support the idea, even though we do not understand why Congress does not regulate all gambling within the United States if it is going to regulate Indian gambling. We see no reason or solution to only looking into Indian gambling. Cetainly, if Congress were seriously interested in eradicating organized crime and drugs from gambling, it would pass national legislation. Nonetheless, we support the regulation of Indian gambling, as we want fair games and we want fair treatment for everyone, including the tribes and the participants.

Because of our desire to have reasonable regulations, I would next like to discuss H.R. 1920's class III Indian gambling. The Pueblo of Santa Ana proposes that the Senate adopt reasonable regulations regarding the class III Indian gambling that would preserve the following principles:

Preservation of tribal sovereignty: Tribal ordinances and management of contracts should be approved by the National Indian Gambling Commission or the Bureau of Indian Affairs. Tribes should set the days and times for events within the reservation boundaries and should regulate these days and times. We do not want our competitors setting the dates and times.

Congress should eliminate the unfair moratorium included in H.R. 1920. Fair competition for both States and tribes. Indian tribes should return to the public the same precentage of the handle as State race tracks pay to the betting public, so as to avoid unfair competition with off-reservation tracks.

Proper enforcement against illegal activity. The States could be allowed, if they choose, to enter into contracts with the National Indian Gaming Association or joint powers of agreements with tribes to police the day-to-day operations of tribal gambling activities.

Tribal enterprises should have only such gambling activities as are authorized by the law as interpreted by the Federal courts. The Pueblo of Santa Ana wants to compete in the legitimate free enterprise system. The Pueblo wants to exercise rights of self-determination and, through economic development, create jobs for its people and revenues for the Pueblo in the future and also those of surrounding communities, which would benefit by parimutuel wagering at Santa Ana Pueblo.

We would encourage you to give us the opportunity to be part of the American free enterprise system. We beg you not to turn our enterprises over to the States.

We appreciate the opportunity to express our views on this matter on behalf of the Pueblo of Santa Ana, and we will be happy to supply any additional information that the committee or Senators want. This concludes my oral remarks. As you will see from my prepared testimony which I have submitted to this committee, the proposal which I have described is outlined in greater detail. I am very pleased to answer any questions the committee may have.

[Prepared statement of Mr. Montoya appears in the appendix.]

Mr. **Taylor**. Thank you very much, Mr. Montoya. I think before we ask questions of you, we will hear from Mrs. Garcia.

STATEMENT OF NORA GARCIA, CHAIRPERSON, FORT MOJAVE INDIAN TRIBE, FORT MOJAVE, NV, ACCOMPANIED BY THOMAS FREDERICKS, ESQ., TRIBAL ATTORNEY, BOULDER, CO

Ms. **Garcia**. Thank you. My name is Nora Garcia. I represent the Fort Mojave Tribe as chairperson. With me today is our legal counsel, Tom Fredericks. On behalf of the Fort Mojave Indian Tribe of Arizona, California, and Nevada, I would like to deliver this statement concerning proposed Indian gaming legislation and submit an oral summary of its contents.

At present, there are three formats under which the Senate may determine to regulate gambling in Indian country; namely, H.R. 1920, S. 902, the companion bill of H.R. 1920, and the administration's proposed bill, entitled, "Indian Gambling Authorization and Regulation Act of 1986."

Of the three proposals, the tribe submits comments regarding H.R. 1920, which apply equally to S. 902, and lends its support to the administration's bill, provided the same is altered to reflect the resolution of the tribe's area of concern.

Federal impediments to gaming legislation: There are several Federal criminal statutes which speak to action defined as gambling racketeering or aspects of organized crime. Generally, these statutes do not come into operation unless the underlying act was one chargeable under State law. However, to the tribe's mind, this issue of whether other existing laws declare a crime what these proposals allow for should be addressed in the Federal Indian gaming legislation.

Moreover, it is unlawful to manufacture, recondition, repair, sell, transport, possess, or use any gambling device within Indian country (15 U.S.C. sec. 1175). As a result, the Indian tribes of Nevada and elsewhere could find themselves in the unenviable position of having fully complied with a State's criminal, regulatory, and licensing laws when opening and operating a facility containing gambling devices, and then learn that the tribe's officers, employees, and patrons were subject to the prosecution under 15 U.S.C. 1175.

The Fort Mojave Tribe, accordingly, suggests that the administration's bill and H.R. 1920 or S. 902, if they were to become law, be amended to provide that Indian tribes in possession of gambling devices pursuant to State law and conducting gaming in accordance with State law be exempted from Federal prosecution for performance of those activities to State jurisdiction.

H.R. 1920 and S. 902 anticipate application of State law requirements to class III gambling, while section 202(c) simply bestows jurisdiction on the States over the activity. This unilateral application of State law to Indian reservations does not comply with existing law relative to Federal, tribal, and State jurisdiction. The tribe, as a result, offers the following for consideration:

Under the amendment proposed by the tribes, a State would have no jurisdiction on Indian lands unless a tribe enacted its own ordinance authorizing gambling other than bingo, social, or ceremonial gaming. Indian gambling and State jurisdiction thereover would then be similar to 18 U.S.C. 1162 under which States can obtain certain types of criminal and civil jurisdiction on Indian reservations only with the consent of the affected Indian tribe.

A provision of this kind would not impair or undercut tribal sovereignty to the extent of a direct application of State law by the Federal Government because a State would not have any jurisdiction without a tribe's consent and unless a tribe essentially invited the State onto the reservation.

The tribe believes that insertion of a consent clause in the bill would avoid many potential conflicts. Also, the legislation would then follow prior statutes and case law aimed at separation of Federal, tribal, and State jurisdiction and comport with the purposes and import of the Indian Self-Determination Act.

Three, Nevada amendment: H.R. 1920 was amended at the request of Congresswoman Vucanovich to state that its terms shall not apply to gaming on Indian lands located within the State of Nevada. A review of the debate preceding the Vucanovich amendment reveals that what was sought was not an absolute liability to the bill to Nevada, being instead a recognition of Nevada's ability to regulate and license gambling free of Federal supervision and interference.

The Fort Mojave Tribe requests that this amendatory language be omitted from any Indian gaming legislation which may be passed. Were it to be allowed to remain as introduced and incorporated in H.R. 1920, the amendment would have the curious effect of providing for Indian gambling in those States without the full gamut of gaming activities and simultaneously barring Indian gambling in the only State where gambling is an aspect of everyday life.

Gambling moratorium: The language of H.R. 1920 allowing for class I gaming, the equivalent of section 202(c), gambling under the administration bill, has been substantially diluted by holding the authorization for class III gambling in abeyance for 4 years. To the tribe's mind, imposition of such a moratorium impinges on the rights bestowed by the class III authorization of H.R. 1920 and would be a self-defeating amendment of any Federal gaming legislation.

The administration's bill grants to Indian tribes the opportunity to conduct section 202(c) gaming when governed and provided by State criminal, regulatory, and licensing laws. To grant this opportunity on the one hand and simultaneously instruct the grantee that it may not exercise the grant until 4 years hence seems to make little, if any, sense.

The tribe therefore strongly advises against inclusion of a moratorium on section 202(c) gaming in the administration's bill and opposes the moratorium included with H.R. 1920. Simply put, if the bill is intended to provide for gambling when it occurs in accordance with the laws in the State, no end is served by delaying the start of that activity.

In conclusion, the tribe is here today to inform the Senate that passage of Indian gaming legislation in the face of reduced Federal assistance is not only appropriate but imperative. We as an Indian tribe are not the owners of this country's most fertile land or its primary economic centers. If we are to survive as an independent, self-sufficient, viable people, we must be allowed to continue with our current plans in progress of developing a major city in the Laughlin, NV, resort area, which is the fastest growing gaming resort in the country.

The gaming industry is the most important economic consideration to our tribal land. It literally adds millions of dollars to the feasibility of developing our lands, and without it we will not only be denied equal opportunity of our non-Indian neighbors but will suffer major financial losses.

The Fort Mojave Tribe therefore respectfully recommends that this committee send to the Senate and support the passage of the proposed Indian Gaming Authorization and Regulation Act of 1986, modified in those respects addressed above. Thank you.

[Prepared statement of Ms. Garcia appears in the appendix.]

Mr. TAYLOR. Thank you very much.

We have a few questions, and I will start with you, Mr. Montoya. If you were able to go forward with your gaming operation, the racetrack, how would your days of operation coincide with those authorized by the State?

Mr. MONTOYA. I think that what we've been talking about is taking a look at the race dates and trying to minimize our racing dates so that we would not have such a large impact on some of the other tracks off the reservations. For instance, dogracing tracks generally operate at night and not in the afternoon as horseracing tracks do.

Mr. TAYLOR. So have you worked with the State at all on that question?

Mr. MONTOYA. We wrote to the Governor of the State of New Mexico at the outset of our planning for this operation, offering to fund 1 percent, make available to the State 1 percent of the total handle for law enforcement agreements.

Mr. TAYLOR. What's the nearest racetrack to you?

Mr. MONTOYA. The nearest racetrack is the New Mexico State racing—horseracing track in Albuquerque, NM, about 18 miles away.

Mr. TAYLOR. That only operates a part of the year; is that correct?

Mr. MONTOYA. Part of the year. During the New Mexico State Fair they also have the spring racing season, which runs, I believe, from January to May.

Mr. TAYLOR. Mrs. Garcia, the question was asked of Attorney General McKay whether he was aware of any impediments to tribal gaming other than the Federal statute that prohibits mechanical devices on Indian reservations. I would ask you the same question, though you may have covered that in your testimony.

Ms. GARCIA. Only title 15, United States Code, section 1175, which prohibits the transporting of the gaming devices on Indian reservations.

Mr. TAYLOR. That's the most important impediment that you're aware of?

Ms. GARCIA. Right.

Mr. TAYLOR. Mr. Fredericks, do you have anything you would like to add to this testimony?

Mr. FREDERICKS. My name is Tom Fredericks. I am the attorney for the Fort Mojave Tribe.

I think the important thing we also wanted to point out was the Organized Crime Control Act prohibits gambling only if it's in violation of State law. Of course, you know, a lot of the problems now is to try to determine whether or not State law is in violation. We would like to see some language that would clarify, and if you say that the jurisdiction over gaming activities is under State law, then I guess that maybe clarifies it. Right now, though, I think a lot of the tribes are subject to having Federal prosecutions because of the clout that exists as to whether they're in violation of State law. Especially the Organized Crime Control Act says that if you're in violation of State law, then it kicks in the Federal prohibitions. That's kind of a prerequisite.

The other thing that I would like to say is that we hear from the national racing organizations that they're concerned. We also hear from the attorney generals that they're concerned with having an equal application of the law. You know, I didn't hear their concern when Indians were prohibited from gaming by the interstate—or transporting gambling devices in interstate and foreign commerce.

In a State like Nevada, where we're located, we have been virtually prohibited from gambling by that statute. I didn't hear them complaining or coming to our aid saying we were denied an equal application of the law. Now that Indians are exercising their authority to provide gambling as an economic benefit to their respective reservations, now somehow it's important that it be applied equally.

The other thing is that they say that gaming is unregulated. I think they have to recognize that within Indian country the primary government is tribal government and that the tribal governments have the authority to regulate. It's been my experience that Indian tribes can create as much bureaucracy as the Federal Government or the State government and can regulate in the same manner. I think left to exercise that regulation, you would find a very responsive regulatory system put in place.

But the problem is right now is that with all the concern with protecting Indian tribes from both the Federal level and at the State level, it's very difficult for Indian tribes to really put that mechanism into place and to have the benefits of, say, a Nevada, where they had the trial and errors of regulation for over a period of time. It's always the Indians are not left to fail; everybody wants to protect the Indians so that they don't fail. As a result, everybody regulates but the Indians, and I think that's a difficult situation.

The other thing is we're a little out of step with the other tribes on the jurisdictional area in our proposal, and I think the primary reason for that is that we're in a State where regulation of gambling—or gambling is a statewide industry in Nevada, and our proposal is basically to come under the regulatory system. It's known quantity. We don't want to get involved in the regulation of casino-type gambling. I don't think we're large enough, and we feel that we have a known quantity, a known regulatory entity, and we feel that we can work with Nevada. All we want is an equal opportunity to participate in the gaming industry just like our non-Indian neighbors so that our lands can be utilized to their highest and best use.

Mr. TAYLOR. Thank you very much.

Mr. MONTOYA. Mr. Chairman, Mr. Ed Gabriel would like to add a comment.

Mr. GABRIEL. Thank you. Mr. Chairman, I just wanted to summarize a feeling in our research on this issue. We have heard the State attorney generals and the gaming interests today say that they're concerned for a number of reasons, with the tribal gaming. The fact of the matter is they just don't want competition. That's the bottom line. They don't want to see competition.

The reason why the Santa Ana feels strongly about that point is that we've come up with solutions about the issue of competition with the States, fair competition, proper enforcement against illegal activities, and conformance with State law, while still preserving tribal sovereignty—and they still don't like it. That leaves us with one issue, and that is: competition. I wanted to make that point.

Mr. TAYLOR. Thank you very much.

I don't have any further questions for this panel of witnesses.

Mr. **Montoya**. Thank you, Mr. Chairman.

Mr. **Taylor**. Thank you.

Our next panel is: Darrell Wadena, chairman of the White Earth Band of Chippewa; Hartley White, chairman of the Leech Lake Band of Chippewa; and Gordon Dickey, chairman of the Menominee Tribe.

STATEMENT OF DARRELL WADENA, CHAIRMAN, WHITE EARTH BAND OF CHIPPEWA, WHITE EARTH, MN, ACCOMPANIED BY HARTLEY WHITE, CHAIRMAN, LEECH LAKE BAND OF CHIPPEWA, CASS LAKE, MN

Mr. **Wadena**. Mr. Chairman, Mr. Taylor, I am Darrell Wadena, chairman of the White Earth Reservation Tribal Council. With me is Mr. Hartley White, chairman of the Leech Lake Reservation Business Committee. We have a joint statement which we submitted for the record, and at this point, with your permission, we would like to summarize orally that statement which we submitted.

Mr. **Taylor**. Your written statement will appear in the record at this point.

Mr. **Wadena**. We appreciate the opportunity to testify here today to present our views on proposed Indian gaming legislation. The White Earth Reservation Council supports enactment of H.R. 1920, with amendments. Mr. White will discuss those amendments later on in the testimony.

Both of our bands conduct gaming operations which are wholly owned and operated by our respective bands. We do not belong to national Indian gaming associations, and we speak only for our respective bands.

We commend Senator DeConcini for introducing S. 902. We appreciate his interest and also his concern: While S. 902 is, in general a positive bill, it contains a provision for regional gaming commissions which could invade the sovereignty of tribal councils by decisions that would override those councils.

In addition, the regional approach would not necessarily be relevant to the location of tribal bingo operations and would have nonbingo-operating tribes and organizations representing and making rules and regulations for bingo-operating tribes. This would not be an acceptable arrangement to many of us.

The most disturbing proposals, however, have come from our own trustee. The administration's proposed bill is paternalistic and patronizing and could even be called anti-Indian. While the administration has endorsed the principle of self-determination for Indian tribes, you have to look pretty hard to find any evidence that they support that principle in that bill. The shared Federal-tribal power that would be authorized in the bill are practically nonexistent.

The proposed legislation also virtually guarantees Federal control of the bingo commission it would establish. In addition, it would give the commission wide-ranging powers to control tribal bingo operations through broad rulemaking authority. We are strongly opposed, as the administration must know, to any provision of any legislation that would erode our self-government.

Section 301 of the administration bill would narrow the definition of bingo to apply to bingo only. Pull tabs and punchboard sales would be eliminated. Many tribal gaming operations have combined pull tab and punchboard sales with their bingo games where it is legal. The trustee has approved tribal gaming ordinances, knowing that both activities were included. Now the same trustee proposes to disallow such sales.

The trustee has approved guaranteed loans to finance operations that include pull tabs and punchboards. Now the trustee proposes a measure that would cripple our ability to repay those very loans.

These are only a few of our concerns related to the administration's Indian gaming bill, but those provisions alone would prove fatal to scores of successfully tribally owned, operated, and regulatied gaming enterprises. Our own bingo game of the White Earth Golden Eagle Bingo Lodge has been in operation since 1984. We currently employ 3 full-time and 18 part-time employees. Last year we had a gross sales of $1,414,889, and a net profit of $99,277. Profits go equally to support programs that were cut and to enhance those programs socially, educationally, and also for work programs that provide employment for people.

To protect our games and economic advantages we enjoy through them, we are in favor of appropriate legislation. We urge this committee to move for prompt enactment of H.R. 1920. Thank you, Mr. Chairman, for your indulgence. I would like to turn it over to Mr. Hartley White for his comments at this point.

[Prepared statement of Mr. Wadena appears in the appendix.]

Mr. TAYLOR. Thank you, Mr Wadena.

Mr. White?

Mr. WHITE. Thank you, Mr. Chairman. My name is Hartley White, chairman of the Leech Lake Reservation Business Committee. We appreciate the opportunity to testify here today.

We have owned and operated a bingo game since 1983, We began very small. Today we employ 65 people. All but one are tribal members. With a payroll of some $300,000, 20 percent of our staff received some sort of public assistance before being hired by the bingo operation. Gross income for the first 11 months in our new facility, opened in November of 1984, was $3.8 million. That profit was $1,663—no, $163,427; 50 percent of the profit went to our various communities for general support; 30 percent for constituent services, including emergency problems; and 20 percent to supplement social service problems.

Those figures will give you some idea of how income from bingo is used. We have state-of-the-art accounting procedures, strong checks and balances, monitoring of the game, and other oversight functions. The bingo manager is responsible to the business committee, and the business committee is responsible to its membership.

Clearly, our bingo operation makes a positive contribution to our lives. Also, you will get some idea of how these games are run, to offset a little bit the Justice Department's picture of us as wild and wooly unregulated game operators. Our trustee seems to share this view.

The Leech Lake Band supports H.R. 1920, with amendments. This bill is the product of 2 years of careful and intensive work. It is our belief that our interests and those of tribes across the Nation will be best served by H.R. 1920. Although H.R. 1920 may contain specific provisions we feel need amending, it contains other provisions that meet broader tribal considerations and make the bill generally accepetable in its present form. My layman's understanding is that H.R. 1920 codifies the state of the law and, by doing so, would insulate Indian gaming from future legal challenges. It provides a Federal regulatory framework that is responsive to Indian needs and which also answers the Justice Department's complaint.

This bill is in keeping with the historical Federal and Indian relationship and respects our inherent sovereign powers. The definition of bingo in H.R. 1920 is compatible with the Indian gaming operations as they exist. Notwithstanding our support for this legislation, we feel our game is operating efficiently and in a way that benefits the tribe.

We have suggested two amendments: No. 1, national Indian gaming commission. We would require that the commission's budget be shared on a 50-50 basis with the Federal Government. No. 2, change membership in the commission back to seven, eliminating the additional member that represents the State.

With that, Mr. Chairman, I want to thank you again for this opportunity.

Mr. TAYLOR. Thank you, Mr. White.

Mr. Dickie?

STATEMENT OF GORDON DICKIE, CHAIRMAN, MENOMINEE TRIBE, MENOMINEE, WI

Mr. DICKIE. Thank you, Mr. Chairman. For the record, my name is Gordon Dickie, chairman of the Menominee Indian Tribe of Wisconsin. I have a prepared statement. I would like to have it inserted in the record, with one minor correction, a typographical error on page 2, where the figure shows "$1,500," that figure should be "$500."

Mr. TAYLOR. Thank you. Your written statement, as corrected, will be included in its entirety in the record.

Mr. DICKIE. Indian bingo is extremely important to the Menominee people. There are 16 different programs that we subsidize with the profits from the bingo operation. Many of these programs are essential to the well-being of especially our elderly people.

Without Indian bingo, there would be suffering, untold suffering. For example, some of these elderly people have received assistance from the housing programs, repair work done on their homes. Once they receive that assistance, they can no longer apply for additional assistance 5 or 6 years later.

Mr. TAYLOR. You are referring to the Bureau of Indian Affairs Housing Improvement Program?

Mr. DICKIE. Right. This means that if 5 or 6 years down the road a furnace burns out, these people have no place to turn except to the tribe, and with 20 and 30 degree below zero weather, the tribe must find ways and means to help these people out. This is only one of the examples.

I have heard a lot of discussion here today about outside influences in tribal bingo. Well, we've had some experiences along those lines. Over 1 year ago, a bingo management and investment firm proposed buying land in the city of Kenosha, which is approximately halfway between Chicago and Milwaukee. They, in turn, would give that land to the Menominee Tribe, who then would ask that it be turned into a trust.

Once this was accomplished, the bingo firm would then construct a bingo palace. From the net profit of this operation they would receive 45 percent, we would receive 55 percent.

It's a real temptation because they're talking in millions of dollars. But the tribal leaders gave serious consideration to it. They felt that it did not in any way help the unemployment problem on the reservation because it was over 200 miles away. They were concerned because it was in what we know is a very-high-crime district. We had no way of monitoring the program that far away. It would be under the complete control and management of the bingo firm. Last but not least, we felt that steps of this kind could very readily destroy Indian bingo in the end. So the tribe rejected this offer.

Later in the year another proposition was presented. A bingo management firm from Las Vegas offered to build a bingo palace with a seating capacity of 1,500 on the Menominee reservation. They even flew us out to St. Regis Mohawk to look at their operation. And it was impressive. They made a real sales pitch by putting out beautiful pamphlets, folders, radio advertising, because what had happened was that the tribal legislature had a split vote on whether or not they should enter such a contract.

As a result, this was put on the referendum ballot, and although the push was on to get it approved and considerable money spent in promoting it—and those of us who had opposed it had very limited money to back our position—very happily the result of that referendum ballot was 334 in favor, 872 against contracting with outside management now and in the future.

Our bingo is a small operation. We can improve on it. We can build it up a little more than it is. But we have no problems with it. We have a bingo commission of our own. They must report to the tribal legislature on a monthly basis. They hire their own security guards. We have no complaints from the surrounding area.

In fact, many people enjoy coming to our bingo from the surrounding communities. I would like to get their reaction in writing when I return to the reservation and have that inserted in the record at a later date.

[Information to be furnished appears in the appendix.]

Mr. Dickie. We have very good friends in the Oneidas, who have a very profitble, well-organized operation. The Oneidas have made us proud that Indian people can make progress on their own. Not many years ago they had very little of their own. Today they have branched out. They have wisely invested their money. The bingo operation is operated by them, no outside interference, no outside management. They have set an example, I believe, for the rest of us to follow.

Recently, we had a rafting trip scheduled for the Governor of Wisconsin. We invited other Indians to participate. The Oneidas sent two of theirs. We have one of the finest white-water rafting rivers anywhere in the Midwest. Fortunately, the two Indians were able to go over the falls without tipping over. [Laughter.]

But when they finished the trip, they immediately started thinking of new business. They're going to sit down and discuss with us the possibility of them busing people over from their bingo operation and other facilities over to the reservation to enjoy whitewater rafting. With this kind of coordination and cooperation, we're bound to succeed—providing we can hang onto our bingo.

Thank you very much, Mr. Chairman.

[Prepared statement of Mr. Dickie appears in the appendix.]

Mr. TAYLOR. Thank you very much, Mr. Dickie.

I don't have many questions to ask. The Department of the Interior testified this morning, and the Department of Justice, that they were unable to obtain any breakdown in their survey between income generated from pull tabs and punchboards as opposed to income generated from more customary bingo.

Mr. DICKIE. Mr. Chairman, if they contact my tribe, they can have it.

Mr. TAYLOR. Well, in the survey they conducted, did they ask you for a breakdown of that?

Mr. DICKIE. Not that I know of.

Mr. TAYLOR. Mr. Wadena?

Mr. WADENA. Yes; we received the survey. The problem that we had at the time, we were just going through an audit to determine what those figures were. I think they will be forthcoming.

Mr. TAYLOR. Did they ask you to break it down between the different kinds of games?

Mr. WADENA. I didn't see the form itself. We turned it over to the bingo commission, but it was quite, you know, in detail.

Mr. TAYLOR. Mr. White, do you recall?

Mr. WHITE. Yes; I do, but it wasn't quite—we didn't quite understand just what kind of a breakout they wanted because it was, you know—but I would be willing to volunteer, if the Department of Justice and the Interior want to make a site visit to the bingo palace, we would sure be more than happy to give them all the figures they want. But it wasn't quite clear, you know, as to what was in that questionnaire.

Mr. TAYLOR. Yes; I think we're going to get a copy of the survey instrument. But I just wondered what the answer was.

I don't think we have any further questions. Thank you very much for your testimony.

Mr. WHITE. Thank you.

Mr. WADENA. Thank you.

Mr. DICKIE. Thank you.

Mr. TAYLOR. Next we will hear from Mr. John Duffy, sheriff of San Diego County, CA, on behalf of the National Sheriffs Association in Alexandria, VA.

Mr. Duffy, welcome to the committee, and we look forward to hearing your testimony.

STATEMENT OF JOHN F. DUFFY, SHERIFF OF SAN DIEGO COUNTY, CA, ON BEHALF OF NATIONAL SHERIFFS' ASSOCIATION, ALEXANDRIA, VA

Mr. DUFFY. Thank you. The ranks seem a little thin.

Mr. TAYLOR. They get thinner as the afternoon goes along.

Mr. DUFFY. You have my written testimony in front of you.

Mr. TAYLOR. Yes; we have.

Mr. DUFFY. All right.

Mr. TAYLOR. It will be made a part of the record at this point.

Mr. DUFFY. If you have it in front of you, I am going to, a little bit later, refer to a map which is at the end.

I am here representing over 3,000 elected sheriffs in the counties throughout the United States, many of whom have reservations and Indian lands in their primary service areas, in the unincorporated portions of those counties. We are all elected officials, and we are elected by Indians and non-Indians alike.

I want to thank you for the opportunity to advise you of what we feel is a very tragic situation in many of our counties, which has been created by the Ninth Circuit Court of Appeals in *Barona* v. *Duffy*—I happen to be the defendant in that case—as well as the Second Circuit Court of Appeals in the State of Florida, just prior to that, in *Seminole Tribe* v. *Butterworth*, where Indians are now being victimized and defrauded by profiteering management companies with established—I emphasize "established"—not potential organized-crime connections. Where unsuspecting investors in these management companies are being defrauded as well, and where Indian bingo players are bused to gambling casinos on Indian lands only to be cheated out of an even chance to win the big-stakes prizes by shills who have ben brought in by the management companies, have won rigged games and then secretly met with the management companies and returned those prize moneys to the management companies and their managers and representatives, thereby reducing the margin of profit and thereby cheating the Indian tribal council of their share of the percentage of profit.

First, I would like, if I may, to simply paint a picture, and then I would like to suggest what we believe, as the shefiffs who have to deal with this problem on a regular basis, Congress can best do to rectify the situation before it gets worse.

First of all, I would like to call attention to Public Law 83-280, which was enacted by the Congress in 1953. In 1953 I was just becoming a deputy sheriff in San Diego County. In about 1956 one of my assignments was to work in the rural, what we call the back country area of San Diego County, where I enforced the law in San Diego County equally, whether it was on Indian land or non-Indian land, because the Congress had withdrawn Federal authority for enforcing criminal law in Public Law 83-280 States. And I want to make that distinction. I think it's very important to the consideration of this issue.

There are some States like California, Florida, Wisconsin, Washington, and many others which, by Congress, criminal law enforcement passed to the sheriffs and deputy sheriffs in those counties—all criminal law enforcement.

Mr. TAYLOR. So what you're saying is that Congress withdrew the law enforcement, you mean they withdrew the Federal law enforcement from those reservations?

Mr. DUFFY. Removed Federal law enforcement. Federal FBI agents, who used to investigate not only major crimes but minor crimes, and even domestic assaults and that sort of thing, were removed from the Indian reservations in those States and were replaced by deputy sheriffs, who enforced the same State laws that were applicable anywhere in the rest of the county.

That went along for a number of years with some court tests of the conflict between Indian sovereignty and the new situation of State law applying on Indian lands.

In my own county, a public dance hall ordinance was contested in the Federal courts by the Rincon Tribe, and the Federal courts found that it was a criminal statute that was to be enforced on the Indian reservation as well as off the reservation, as long as there were non-Indians being invited to come to the dance, for profit. They would have to go by whatever the local law was.

Another one that reached the U.S. Supreme Court in my county was the Pala Indian Reservation. At issue was the sale of alcoholic beverages to non-Indians on the reservation without complying with State law. The Supreme Court found in favor of the State side. The State's law did apply.

Mr. TAYLOR. When you refer to "the Supreme Court," are you talking about——

Mr. DUFFY. U.S. Supreme Court.

Mr. TAYLOR. U.S. Supreme Court?

Mr. DUFFY. That's right. That went along well until an individual who represented himself to be the attorney and president of a management company, which we later learned did not exist at that time, came into our office and advised us that they had signed a bingo contract with the Barona Band of Mission Indians, and they felt they had no requirement to go by State law. To make a long story short, there was a test case in U.S. district court which ruled that they did have to comply with State law, but it was subsequently reversed by the ninth circuit. The case was known as *Barona* v. *John F. Duffy, Sheriff of San Diego County.*

With that beginning in California, high-stakes bingo games began all over the State. We have 117 reservations in California. There are now about 26 to date, and they're increasing almost daily, in which high-stakes gambling takes place that would be illegal in any other place in the State except on that reservation. If the same type of gambling were to take place in the Catholic churches and the service clubs and the mobile homeowners association recreation halls immediately adjacent to those Indian lands, the owners and operators would be prosecuted. But because of the ninth circuit court, these enclaves now exist.

I would like to refer you now to the map in the back of that written testimony, to show you the fact that San Diego County, with its immediately adjacent population area to the south in Tijuana, is a metropolitan area with 3.5 million people: 2.2 million in San Diego County and about 1.3 million in Tijuana, Mexico.

The reservations that are marked with the dark squares are the ones where Indian gambling is now taking place or contracts have been signed and their startup has not yet begun. The ones marked with the "X" are those with the potential for becoming enclaves of unregulated gambling in San Diego County.

This is an example of my county, but it's equally true in other counties of my State and other counties of other States. We happen to have some 20 Indian reservations, many of which are strategically located along interstate highways to transport large numbers of people to those gambling halls.

On the reservations in California, virtually all of them, the Indians are exploited and they're cheated by unscrupulous profiteering companies with established connections to organized crime. In some cases organized crime is directly involved in the bingo operation itself, and many of them are involved in drug trafficking.

I want to give the example of the Barona Indian Reservation as well as the American Management & Amusement Co., which is a bingo management company. First of all, let me make the point that, at least on that reservation, it is very thinly divided among the Indianas as to whether they want that management company on their reservation.

Those Indians opposing the management company or bingo are referred to as "dissidents" by the management company as well as those members of the tribal council who voted for the 15-year sweetheart contract with the management company——

Mr. TAYLOR. Which reservation was that you're referring to?

Mr. DUFFY. Barona.

Mr. TAYLOR. Barona.

Mr. DUFFY. These so-called dissidents, after the ninth circuit court case and because of the publicity involved, initiated a recall election, which failed by only three votes, to recall the entire tribal council in order to cancel the contract for bingo operations.

Now, of course, the bingo operation had been going on for some time. Let me tell you what happened next. The Indians up to this point hadn't received a single penny from this management company who took over an existing hall, made some modifications and began to run the high-stakes gambling. After winning a recall election by three votes, they suddenly discovered that they had made $100,000 even—not about that amount, but exactly $100,000—and, "Here's $55,000 as your share, Barona Tribal Council, and now, of course, we have our $45,000."

Shortly after that, as the holiday season was approaching, each voting member of the Barona Tribe was given a $1,000 Christmas bonus by the management company. I think that effectively assured the fact that there would be no more recall elections and no more problems for the management company, because it's in their best interest to own and control the voting bloc on the Indian tribal council.

Let me just quickly say how they cheat Indians and non-Indians alike. First of all, skimming. My written testimony makes reference to the fact that because of information from the so-called dissident Indians on the reservation, my office investigated skimming operations there. We had the help of the State attorney general.

We served search warrants and grand jury subpoenas in Atlantic City, NJ; in Las Vega, NV; in Los Angeles; other locations of San Diego County; and at the Barona Bingo Palace, as it's called, the casino—and seized records, truckloads of records, documents, and other evidence.

As a result, the immediate past general manager was indicated on six counts of grand theft, has pled quilty to four counts as a prearranged plea bargain, is now a cooperative witness in several other cases—and has identified organized-crime figures as being involved in the bingo operations. He is a cooperative witness in a double-murder investigation in Los Angeles, a triple-murder investigation in Las Vegas connected with gambling, both of them, and in one case connected with the bingo gambling in Barona.

Mr. TAYLOR. Just for clarity, the murders that you have referred to were not associated with this bingo operation, were they?

Mr. DUFFY. The one in Los Angeles, there was a connection with the Barona gambling, by phone calls back and forth.

Mr. TAYLOR. Was there any suggestion that these murders had some connection with the tribal outfit?

Mr. DUFFY. That's right. There is a suggestion of that. Stewart Siegel, whose name is mentioned there, is the one who is cooperating in that investigation, and it is not complete yet.

Also indicted, and pending trial, is the assistant general manager, a fellow by the name of Joseph Catania with Las Vegas casino connections. He is pending now on three counts of conspiracy to commit grand theft, participating in the skimming operations where they brought in shills who won rigged games and then met secretly and gave the money back. A fellow with connections in the Atlantic City casinos, by the name of Louis Cordileone, is also now pending trial, and is charged with subornation of perjury, in that his girlfriend was a shill and he encouraged her and directed her to lie to the grand jury. They are both using an attorney by the name of Nicholas DePento, who is reputed—well, not reputed, he is a well-known attorney for organized-crime figures in our area.

Now, what else do they do? This management company has made, by their own statements, $1 million a month gross since they began operations. Many of the Indian houses on that reservation still lack running water, and other than $100,000 that they received and the Christmas bonuses, they have received virtually nothing in the 2½ years that this operation made that kind of money.

Mr. TAYLOR. This is the American Amusement Co. you're referring to?

Mr. DUFFY. That's exactly who I am referring to.

Mr. TAYLOR. And they are claiming they made $1 million a month?

Mr. DUFFY. Exactly. Gross.

Mr. TAYLOR. Out of the Barona operation?

Mr. DUFFY. Out of the Barona operation. That's one of the five in my county.

Mr. TAYLOR. That's gross. So what would be the net?

Mr. DUFFY. That's their statement.

Mr. TAYLOR. What would be the net on the operation?

Mr. DUFFY. Well, the net, they claim they didn't make any money because they had these high prizes and they had to pay off the jackpot, the winners. They also had very high operating expenses, they claimed.

It doesn't take much imagination when you look at what they claim they paid the transportation companies, which is another way you skim the money; what they claim they pay the supply companies—who in many cases in our State have direct connections to organized crime, the supply companies, the transportation companies, who get exorbitant contracts, and we strongly suspect, then kick back part of the money because it's now kept out of the profit margin which they have to divide 55 percent of the tribe and retain 45 percent.

With that, I am trying to paint you the picture of how this cheating of the Indians by the management companies occurs.

Now these photos—why don't you just hand them to them? You can look at them while we're talking.

The photos portray two things: The condition of Indian housing on the reservation at Barona—and on some of the other reservations—where these large profiteering companies have made millions of dollars or have taken that much in and where they claim their expenses and their prizes were so exorbitant that they didn't have a profit to divide up with the Indian tribe.

It will also show you another form of expansion of bingo. I think that speaks to the difficulty that you have in the bills before you; that is, trying to define bingo. You will notice in the back of that book there are some photographs of gambling equipment that you would recognize if you walked into the gambling casinos in Atlantic City, NJ, or in Las Vegas, NV. You will see blackjack tables there, you will see a keno game there, you will see a roulette wheel game there. Those are called bingojack, horserace bingo, bingo wheel of fortune, and other such generic names.

Deputy sheriffs from my office, late one night when the regular bingo closed down, raided the Sycuan Reservation in San Diego County, where Pan American Management has been operating. Pan American operates bingo casinos throughout the country, in such States as Wisconsin, Florida, and Washington. Many of them are through subcompanies and subsidiary companies, like New England Entertainment, as a way to operate these high-stakes bingo games in several States.

In the State of Washington where they had a contract with the Lummi Tribe, the U.S. attorney there brought a civil action against this company and forced them to desist from playing blackjack and other illegal casino gambling games in that area.

In my county, when we seized that gambling equipment, about 300,000 dollars' worth, and cited some 21 employees and operators, we had to have a footrace to the State court so we could file State gambling charges, while the management company was racing to the Federal court to get a writ of prohibition. We happened to win the footrace, but the court definition of bingo which was favorable to us—that is, blackjack is not bingo, keno is not bingo, and roulette is not bingo—is still under appeal by the Pan American Management Co. in our State courts.

The obvious connections which we've established through investigation by my criminal intelligence unit, the Los Angeles Sheriff's Office Intelligence Unit, the State department of justice, and with other agencies throughout the United States are the definite inter-connections between most of these management companies and established criminals.

The principals in those management companies are, in some cases, convicted felons. In other cases they are connected, not only to convicted felons but, to established organized crime families, as well. Let me name some: The Genovese family, the Buffalino family, the Luchese family, the DeCavalcante family. All of those could be linked to Barona bingo.

Mr. TAYLOR. And you are also saying that they're linked to many other management companies?

Mr. DUFFY. That's correct. The Pan American Management Co., for example, is one with connecting companies with organized crime connections and criminal involvement in that company. They're involved in lawsuits with the Indians all over the United States.

I am painting for you a picture of how these management companies are using the loophole created by the ninth circuit and by the second circuit, in particularly Public Law 83-280 States. Now, I can't speak for Arizona and New Mexico, which are quite different, where Indian police still enforce criminal law and where the local sheriff has no law enforcement authority or responsibility on those reservations.

Mr. TAYLOR. How were you able to establish, let's say, the criminal connection with Pan American Management?

Mr. DUFFY. Each of the connections are established in a regular manner that is normally used by law enforcement agencies at every level, by what is called link analysis, where each of the associations and each of the connections are established either by documentation or by direct surveillance.

Mr. TAYLOR. Is that information shared by the FBI?

Mr. DUFFY. Oh, yes.

Mr. TAYLOR. Well, it's my understanding——

Mr. DUFFY. We've received a great deal of lip service from the FBI. I personally shared link analysis charts for the Barona Management with Buck Revell, who is in charge of investigations for the FBI. I also shared them with, at that time, Bud Mullins, head of the Drug Enforcement Administration and his intelligence staff—and had a lot of lip service and no action.

Mr. TAYLOR. Well, would this——

Mr. DUFFY. The FBI couldn't even think of an applicable statute. I said, "Have you ever heard of the RICO statute corrupting tribal councils?" We've gotten absolutely nothing. So it didn't surprise me at all to hear such testimony this morning from Victoria Toensing, or to see in a newspaper article recently a statement by Ross Swimmer from the Department of the Interior that they didn't know about any organized crime connections. That's because the Justice Department doesn't know anything about it. But everybody else in law enforcement does.

Mr. TAYLOR. Well, there have been FBI checks on some of these management companies that have applied for or contracted with tribes, and I think Pan American Management is one, that have been put through FBI computers, and they don't kick it back.

Mr. DUFFY. Sure, that is because NCIC computers contain arrest records. Just because they haven't been arrested doesn't mean they're not organized crime figures or don't have associations with criminals, or are not criminals themselves.

Mr. TAYLOR. But the information has been provided to the FBI, but that has not been plugged into those computers?

Mr. DUFFY. That makes my case precisely. Why the legislation pending before you—all the bills—simply cannot be effectively accomplished. You can't have an Indian Commission in this capital with a small staff, or a large staff, sitting here with their heads in the sand on the banks of the Potomac expecting to see what's going on in reservations.

Mr. Ross Swimmer of the Interior Department visited my county just last week, 1 week ago today. The regional staff of BIA asked me to provide a helicopter to tour our reservations. I said I would be glad to do that, providing Mr. Swimmer meet with me on this problem and let me show him the link analysis chart. I was told that he didn't have time to come and see me in my own county and see what happens, see what the situation really is. He didn't have time to visit any of these things such as the Sycuan gambling casino, but he had time to attend an Indian barbecue on another reservation.

I met an attorney for the U.S. Department of Justice handling Indian gambling for them who didn't know we had a problem in California, but he finally agreed to come as far west as Arizona, and I said, "You had better come a little bit further into San Diego." We got him to San Diego, but we couldn't get him to take a look at what was happening. He didn't have time.

So I have absolutely nothing good to say about the efforts of the Justice Department—or this administration. They have an admirable position with which I happen to agree: The Indians should be more self-sufficient; they should be allowed to develop themselves economically; they should be able to use their resources to make profit. But not through this kind of situation, where these profiteering companies are able to exploit the Indian and non-Indian alike.

So I will simply say to you that none of the bills before you can accomplish what has to be accomplished. The National Sheriffs' Association, representing the locally elected sheriffs who are the ones that have to deal with this problem, would ask that in the following priority order, you would give serious consideration to this approach:

First of all, we would like you to take the three bills you have in front of you, use something, some vehicle, to mark up a bill that would continue to allow State control of gambling whatever the form may be, in whatever State it may be, so that Indian tribes may apply in the same manner as anyone else and be subject to the same regulation everyone else in the counties or States are subject to.

I don't think that needs to include ceremonial gambling. Ceremonial gambling, it's been my experience in my county, has been going on for centuries and generations. While a game called pinon played on some of our reservations goes back a few centuries, it probably technically violates some of the State gambling statutes. Nobody that I have ever heard of in 33 years in my county has ever been concerned about that. I think the tribal councils are well able to regulate that.

Second, if you're not able to do that, then our preference would be that you recognize the distinct difference in Public Law 83-280 States—there aren't may of those. That is where Federal court cases come from, like *Seminoles* v. *Butterworth* and *Barona* v. *Duffy*. Those are Public Law 83-280 States. They're different from States like Arizona, New Mexico, the Dakotas, and so on where the Indian lands are, if I might say, different in their level of sovereignty and not subject to local law enforcement authority and control. In those Public Law 83-280 States, allow whatever gambling takes place to be regulated by State Law. If you must have an Indian commission of some type to oversee bingo, let them confine themselves to those States where Indian police and Federal authority has been untouched by the Congress when they enacted Public Law 83-280 in the fifties.

Our third alternative, although we don't necessarily like this because of the time lag and the fact that new companies will be formed and yet more Indian tribes will be exploited, is to hold all the bills here until the U.S. Supreme Court, which on June 9 agreed to hear *California* v. *Cabazon-Morongo* rules.

In that case, again the ninth circuit not only upheld *Barona* v. *Duffy*, which was their own decision, but they have expanded it to include cardrooms. Let me remind you that the organized-crime control statute on Indian reservations is limited to mechanical devices such as slot machines. Dice, cards, and other nonmechanical devices are specifically not included in the Federal statute.

So we're going to have full-blown gambling casinos, and what I would like to say is, we need help from you, the Congress, because you created Public Law 83-280. The Federal courts have removed some of the law enforcement authority that sheriffs have exercised for about 30 years in terms of controlling criminal activities on Indian lands. Everywhere else in San Diego County, except 20 Indian reservations, I enforce the law of California equally. On those Federal enclaves, I must permit, otherwise illegal gambling to occur, even though I am required to enforce all other State laws on those Indian lands.

Until we can get this ridiculous situation rectified by the courts or by Congress, the situation will worsen as the Federal interstate highways carry our local non-Indian citizens to Federal gambling casinos on Federal Indian lands, where thanks to our Federal courts, the profiteers with unquestioned organized crime connections continue to defraud the Indian tribes and the non-Indian gambler as well. I would be glad to meet with you or your staff and give you more details, if you want, on how some of these unscrupulous individuals are directly involved in the bingo operation itself, how these people defraud the tribes, the bingo players, and how they defraud the investors in these companies as well.

[Prepared statement of Mr. Duffy appears in the appendix.]

Mr. TAYLOR. Well, we would be happy to sit down with you and talk with you.

I have a couple of questions I would like to ask. First of all, what are the laws of the State of California with respect to bingo and pot limits or days of operation or who can operate?

Mr. DUFFY. Commercial bingo is prohibited. The State opened up bingo to charitable and nonprofit organizations, very carefully controlled to point that no outside management companies are permitted. Jackpots are limited to $250. There is a limited amount of time to play.

Mr. TAYLOR. Are days of operation also limited?

Mr. DUFFY. I am sorry?

Mr. TAYLOR. Days of operation?

Mr. DUFFY. Not which days of operation, usually, but it's so many days per week.

Mr. TAYLOR. What would be the effect of placing the tribes in California under the State law? Would their bingo operations continue or would they cease, in your opinion?

Mr. DUFFY. Well, they could certainly continue. They would simply apply like the Catholic churches apply, like the mobile homeowners' associations apply, like the service clubs apply, for a license.

Mr. TAYLOR. What incentive——

Mr. DUFFY. To play bingo——

Mr. TAYLOR. What incentives do people have to go to an Indian reservation in Los Angeles County if there is not some variance in the game and some incentive for nonmembers to come to the reservation?

Mr. DUFFY. What incentive would they have?

Mr. TAYLOR. Yes.

Mr. DUFFY. The same incentive they have to go to a Catholic church or a homeowners' association.

Mr. TAYLOR. Well, after the pictures you have just shown me in this compilation here, they don't quite measure up to some of the Catholic churches that I have looked at.

Mr. DUFFY. Well, let me say that the bingo palaces that have been built—in my view, at the expense of the Indians and probably they have represented to the Indians that it cost or, I should say, they have charged the Indians three times what it would have normally cost—are certainly more elaborate than the rec room of a mobile homeowner or the backroom of a Catholic church or someplace where a Kiwanis Club might play.

At least, the environment is, if you like the environment of a gambling casino. If they were to go by State law and apply for the licenses, they could continue to operate. Certainly, I don't know of any other bingo operations in San Diego County where they can seat 2,000 people. I suppose that is an incentive.

Mr. TAYLOR. Sheriff, let me ask you another question. What are the laws of the State of California with respect to operating card houses?

Mr. DUFFY. I am sorry?

Mr. TAYLOR. Card houses, where you play poker and blackjack.

Mr. DUFFY. Under State law, draw poker is legal so long as there is no bank, nobody is operating a bank for it. The rationale for that is that draw poker is reputed to be, I suppose from the early Western days, a game of skill and not a game of chance. Stud poker, for example, is outlawed because it's strictly a game of chance based on a turn of the card. Dice and that sort of thing are also outlawed by State law.

Mr. TAYLOR. Is blackjack also legal?

Mr. DUFFY. Blackjack is illegal. No card game except draw poker and lowball, which is another form of draw poker, are permitted under California law. There is a local option where if cities or counties don't want to permit it, they don't have to. In the County of San Diego as well as Riverside—where the *Morongo* and *Cabazon* cases occurred—in the unincorporated areas cardrooms are not permitted. No cardroom of any kind is permitted in most parts of the State of California even though State law would allow it, if the local government exercised the option.

Mr. TAYLOR. But in other parts of the State it is allowed?

Mr. DUFFY. Yes; it's a local option by city and county if they want to have it or not.

Mr. TAYLOR. You have a statement in your written testimony to the effect that over 70 percent of the Indian bingo operations are managed by companies with organized crime connections. I am not at all sure that 70 percent of the Indian bingo operations are operated under any management contract at all. Are you referring to just the——

Mr. DUFFY. I am talking only about the management companies.

Mr. TAYLOR. Are you referring to just in the State of California?

Mr. DUFFY. No; I am referring to management companies throughout the country. Virtually all the management companies in our State are connected—and some management companies are subsidiaries of those in other States. And they're interconnected, one with the other, throughout the States of Florida, Wisconsin, and California. I am specifically not referring to those bingo operations that are run by the tribes themselves.

Mr. TAYLOR. I would have only one other question. You are testifying on behalf of the National Sheriffs' Association. Has there been a resolution adopted?

Mr. DUFFY. Yes; I have copies of it here.

Mr. TAYLOR. It was not attached to your testimony, and I think you might want to do that.

Mr. DUFFY. I am sorry I omitted that.

Mr. TAYLOR. I have no further questions. We appreciate your testimony, and I would be happy to meet with you whenever it would be convenient.

Mr. DUFFY. All right.

Mr. TAYLOR. I understand you will be in town tomorrow?

Mr. DUFFY. Yes; at your convenience. I think it's very important that you perhaps get a little bit more detail.

Mr. TAYLOR. Thank you very much.

Let's take a 5-minute recess and come right back. [Recess.]

Mr. TAYLOR. The committee will return to order. We will resume testimony with Mr. Charles Blackwell, representing the Viejas Band of Mission Indians in Alpine, CA; and Mr. Glenn Feldman, attorney for the Cabazon Band of Mission Indians in Idaho, CA.

Mr. Blackwell, you are listed before Mr. Feldman, so why don't we start with you?

STATEMENT OF CHARLES BLACKWELL, J.D., REPRESENTATIVE OF VIEJAS BAND OF MISSION INDIANS, ALPINE CA, AND THE CHICKASAW NATION OF OKLAHOMA, ACCOMPANIED BY GLENN M. FELDMAN, ESQ., ATTORNEY FOR CABAZON BAND OF MISSION INDIANS, INDIO, CA

Mr. BLACKWELL. Thank you, Mr. Chairman and members of the committee. My name is Charles Blackwell. I am president of American Indian Tribal Government and Policy Consultants of Albuquerque, NM. I am here today with my colleague Glenn Feldman of the law firm of O'Connor, Cavanaugh, Anderson, Westover, Killingsworth and Beshears of Phoenix, AZ.

In our joint capacity, Mr. Feldman and I are representing the Viejas Band of Mission Indians from San Diego County in California, separately, I am representing my own people, the Chickasaw Nation of Oklahoma, and then Mr. Feldman is representing, him separately, the Cabazon Band of Mission Indians in California.

In addition to these remarks, my own written statement which has been delivered, Mr. Feldman has a separate written statement, and I am also delivering to the committee and incorporating herein a statement prepared by Gov. Overton James of the Chickasaw Nation of Oklahoma.

Mr. TAYLOR. Mr. Blackwell, we will put your statement and the Governor's in the record at this point, and when Mr. Feldman testifies, we will add his statement at that point.

[Prepared statement of Mr. Blackwell appears in the appendix.]

Mr. BLACKWELL. Thank you. In the interest of the national American Indian community, it is good to know that tribal sovereignty is alive and well in Arizona. We hope that it flourishes and continues to grow as well in the States of California and Oklahoma as well as other States where our brothers and sisters are living on reservations.

In summary, for the Viejas Band of Missouri Indians, the Band generally supports H.R. 1920, with the following exceptions: the 4-year moratorium on class III gaming activities is for an excessive period of time and it is unnecessary, from the tribe's viewpoint, to accomplish those things which it is intended to accomplish by its proposed length of time. The problems which the moratorium is designed to allow the commission time to address will still be there at the end of the 4-year period and should be addressed now rather than later.

In its zeal to regulate Indian gaming and assist the tribes with those things which Sheriff Duffy has very aptly pointed out many tribes may need assistance with, the Congress should not do anything in the process to erode the sovereign power of tribes. That is to be emphasized and kept in mind by the select committee at the request of the Viejas Band of Mission Indians throughout its deliberations and considerations of this legislation.

The Viejas Band of Mission Indians has a card game which has been in existence for 2 years now. The tribe does not want to deal with Federal legislation or regulatory procedures, which in their own capacity are more restrictive than the current State law or public policy as applied by the courts.

Now, for the Chickasaw Tribe of Oklahoma, H.R. 1920 excludes the unique land situation which exists particularly for The Five Tribes on the eastern side of Oklahoma. Specifically, the Chickasaw Tribe, the Chickasaw Nation of Oklahoma would point out that Oklahoma Indian lands should be given unique consideration in deference to its unique status. That land which was originally held in trust for the Chickasaw Nation in Indian territory, later Oklahoma, should be, as it is in other instances, considered reservation land as far as the purpose and intent of the proposed legislation.

Further, both the Chickasaw Nation of Oklahoma and the Viejas Band of Mission Indians would urge that the commission have a majority of Indian members, with Indian-preference policies applied to membership on the commission.

In conclusion, it should be considered, and it is urged, that this legislation and the legislative approach be consistent with that taken in the Indian Child Welfare Act; that is, whenever legislation by the Congress for the United States is instituted to bring into play interaction between sovereign tribes and the State, the roles and responsibilities of the State should be clearly defined by the legislation and set forth so as not to create or compound the confusion which already exists.

For S. 2557, we would like to reserve the opportunity and privilege to make comment after it has been perused, considering that it has just recently been introduced. Thank you, Mr. Chairman.

Mr. **Taylor**. Thank you, Mr. Blackwell. The record will stay open at least 2 weeks to receive any further testimony, including comments on the bill that was introduced last night, S. 2557.

Mr. **Blackwell**. That would be ample. Thank you.

I would now defer to Mr. Feldman, and then we would answer questions.

Mr. **Feldman**. Thank you, Mr. Chairman. My name is Glenn Feldman. I am an attorney from Phoenix, AZ, appearing here today on behalf of the Viejas and Cabazon Bands of Mission Indians in southern California. I have prepared a written statement, and as that is going to be entered into the record and in the interest of time, I would just like to make a couple of very brief comments concerning some of the topics that have been discussed here today.

At last count, eight Federal courts from different parts of the country have considered the question of Indian gambling, and all eight have concluded that tribes have the right to permit and regulate bingo and other forms of gaming under certain circumstances. Last week, the U.S. Supreme Court agreed to review the most recent of these cases, which is now styled *State of California* v. *Cabazon and Morongo Band of Mission Indians*.

I am pleased that no one here today has recommended that this committee defer action on the pending legislation while the Supreme Court acts. In my view, that would be a serious mistake and would represent a disservice to the tribes that are engaged in gaming.

Mr. **Taylor**. Well, I believe that was a third or an alternative recommendation of Sheriff Duffy.

Mr. FELDMAN. In his written testimony, however, I think he recommends that that course not be followed. It was an alternative, but not a recommended alternative in his view, and I would concur with that view and that of the other witnesses who testified earlier this morning.

At this moment, because of certain procedural questions, it's not clear that the Supreme Court will issue a decision on the merits of that case. There are still some questions. The Court has reserved judgment on the jurisdictional question until the hearing on the merits. So it's unclear at this moment whether they will render a decision on the merits. Even if they do, we're talking at least 1 year before that happens.

Mr. TAYLOR. Mr. Feldman, you're an attorney in that case, aren't you?

Mr. FELDMAN. That's correct. I represent the Cabazon Band. We have been litigating this case and its predecessor for 5½ years now, and we are, of course, anxious to get the matter resolved. On the other hand, we want to see this matter resolved in a manner that's going to protect the tribes and their right to the revenues that are being generated by these games.

So while we are perfectly willing to go to the Court and we have every reason to believe that the Court will rule in conformity with the eight previous Federal court decisions, we don't think it would be wise to wait for that decision. It will be some time. There is some question as to whether they will rule on the merits. And finally, even if they do, as we all know, these decisions very rarely decide an issue finally; there are always ways to shade your facts, to shade the law, and to continue litigating.

So the issue of tribal gaming, unless it's resolved by Congress through legislation, will continue to be a source of uncertainty to the tribes, to law enforcement. So I would as a result, I would join with the other witnesses and encourage the committee to act this year on the pending legislation, to seize the opportunity while the momentum is there, and to pass appropriate legislation, appropriately crafted legislation, which will protect this source of revenue for the tribes while providing the necessary degree of Federal oversight.

I am generally satisfied with H.R. 1920, as passed by the House, with a couple of exceptions, and Mr. Blackwell has indicated some of the things that we're concerned about.

The greater concern seems to be over class III gaming. We seem to be over the hurdle, to a large degree, on the bingo issue. That seems to be, from most of the witnesses who appeared here today and others, that doesn't seem to be a source of great controversy anymore—Sheriff Duffy excluded.

But class III is a separate concern, and I don't think that Congress ought to simply lump all class III gaming together and treat it as one entity. Class III takes in a wide variety of activities, and it would be a mistake to conclude that the States heavily regulate all class III gaming within their boundaries, because they don't, and California cardrooms are a perfect example. Under California State law, certain card games are lawful, and the States does not regulate them in any way. The only statutory authority over these games is a very minimal registration law, under which if you own or operate a cardroom where these games are played, you are required to register with the State. It's a registration obligation, nothing more. The State does not regulate in the sense that the Nevada Gaming Commission was discussing earlier today.

Mr. **Taylor**. Do they do background checks on applicants?

Mr. **Feldman**. That is the only thing they do. They do background checks to keep the crooks out.

Mr. **Taylor**. If a person has a felony record, particularly one associated with gaming, then he——

Mr. **Feldman**. Would be excluded from operating a game. I would suggest that in that sort of situation where you have what is class III gaming but which is not extensively regulated by the State, that those same background checks could easily be done by the national commission. They could probably do it better, given FBI resources and the Federal Government's ability to check people's background.

So I think it's too simple to say that all class III gaming should be lumped together and either placed under a moratorium or the jurisdiction delegated to the States. Some reasonable distinctions have to be drawn between the various types of class III gaming, and cardrooms in California are a good example of the type that ought to be available to tribes who wish to pursue that option. If there is to be regulation, the Federal Commission can certainly conduct the necessary background investigations, which is all that the State does in this case.

Finally, I would take serious objection to the testimony that has been offered here today that class III or, to some extent, bingo itself ought to be subject to State regulation. If there is going to be oversight and if there is going to be regulation, it has to be done by and through the Federal Government. The States owe no trust responsibility to these tribes and, speaking candidly, are often antagonistic to the views and positions and aspirations of the tribes. Turning that regulatory authority over to the States would, in my view, be a very, very serious error.

Now, the Chairman asked earlier what would happen if bingo in California was turned over to the State. The answer is the tribes would not be eligible to conduct bingo games of any sort because the California statute specifies the organizations that are eligible to sponsor bingo, and while a broad variety of organizations are listed, Indian tribes are not. So if State regulation applied on a reservation, if State bingo jurisdiction applied on Indian reservations in California today, the tribes would not be eligible to play high-stakes, low-stakes, or any bingo whatsoever.

But even going beyond that, even if appropriate amendments to the State law were made, the concept of allowing States to regulate these tribal activities is one that is fraught with danger. It would set a very, very bad precedent and to the extent that there is or should be Federal regulation of these activities, whether it be class III or whatever, it must be done under a Federal commission which has and exercises trust responsibility with respect to the tribes. Thank you.

[Prepared statement of Mr. Feldman appears in the appendix.]

Mr. **Taylor**. Mr. Feldman, you're the attorney in the case that is under appeal to the Supreme Court, whether that's a questionable appeal or not. Sheriff Duffy testified about organized crime connections with the operation of bingo games in California. What did the ninth circuit say with respect to evidence revealing criminal connections with the Indian gaming?

Mr. **Feldman**. The ninth circuit stated very directly in its opinion that there was absolutely no evidence to suggest any criminal involvement with any of the activities on either the Cabazon or Morongo Reservations. In fact, I would point out that the defendants in that case, stipulated to the fact that there was no criminal involvement in these tribal enterprises.

So I think that if there have been abuses—I am not familiar with the situation that Sheriff Duffy has described—but if there have been abuses, I think that's reason in itself to pass the type of legislation that the committee is considering today. Get the FBI in and get the bad guys out. There is no tribal witness in this room who wants to see crooks and con-men associated with tribal gaming, and if it takes Federal legislation to provide the FBI with the authority to go in and do those kinds of checks, I suspect the tribes are going to go along with that.

Mr. **Taylor**. Mr. Blackwell, I wonder if we could elaborate just slightly. We have your written statement here. But just what is the problem with respect to H.R. 1920 as it applies to Oklahoma?

Mr. **Blackwell**. It doesn't make provisions for lands in Oklahoma that were Indian lands prior to statehood. The Chickasaws, Choctaws, The Five Tribes currently have sovereign jurisdiction over land that was originally reservation land held in trust by the Federal Government for them. There is precedent and there are Federal statutes for having that land treated as reservation land.

Mr. **Taylor**. These would be lands that are held in a restricted status?

Mr. **Blackwell**. It is not held in restricted status currently. It was restricted land; now it is land that is recognized by the Federal Government as land that was held in trust status for those tribes and, as such, is treated as reservation land for legislation reservation such as this and is easily returned to trust for purposes that are valid and in the best interest of the tribe and allowable under Federal law and by the courts.

Mr. **Taylor**. So the problem that you are——

Mr. **Blackwell**. It's simply that Chickasaw land has been excluded from this legislation.

Mr. **Taylor**. Is the restriction on having lands, fee-patent lands, returned to a trust or a restricted-fee status? Is that what the problem is?

Mr. **Blackwell**. The problem is more specifically that the Secretary of the Interior has refused to follow the precedent that has been long established by law and by action by the Federal Government to return this land to trust status when it is located within the exterior boundaries of the original reservations if the purposed use of it is for bingo. It is prejudicial against The Five Tribes. There should be language included in the legislation that would provide for Indian lands in eastern Oklahoma.

Mr. **Taylor**. Is this a problem in the western part of the State, too?

Mr. Blackwell. I have no direct knowledge, although—actually, it's a potential problem that would be endemic throughout Oklahoma.

I then, in summary, would like to say that the Viejas Band of Mission Indians supports H.R. 1920 with the recommendations, additions, and deletions that have been noted. The Chickasaw Nation of Oklahoma supports H.R. 1920 with the stipulation that the legislation be expanded to make provision for treating Chickasaw Indian lands which were formerly held in trust for the tribes as reservation lands under the legislation. Both tribes urge quick and timely passage of H.R. 1920. Thank you.

Mr. Taylor. Thank you, very much.

Mr. Feldman. Thank you.

Mr. Taylor. I have no further questions.

Next we will have Mr. William Houle, chairman of the Fond du Lac Band of Chippewa; and Mr. Purcell Powless, vice chairman of the—well, Mr. Powless, I know you're with the Wisconsin Oneida, but the titles relate to their positions with the National Indian Gaming Association. Appearing also is Francis Skenadore.

Mr. Houle.

STATEMENT OF WILLIAM J. HOULE, CHAIRMAN, FOND DU LAC BAND OF CHIPPEWA, CLOQUET, MN, ACCOMPANIED BY PURCELL POWLESS, VICE CHAIRMAN, NATIONAL INDIAN GAMING ASSOCIATION; AND FRANCIS SKENADORE

Mr. Houle. My name is William J. Houle. I am the chairman of the National Indian Gaming Association and Tribal chairman of the Fond du lac Band of Lake Superior Chippewas. On behalf of the association I want to thank the committee for this opportunity to present our views on the pending legislation that would establish Federal standards and regulations for the conduct of gaming activities on Indian reservations.

First of all, I want to commend the sponsors of these bills and the members of this committee for recognizing and addressing the extremely serious issues raised by the legislation. The National Indian Gaming Association pledges its best efforts in working with this committee and its staff to enact appropriate legislation so that everyone involved will have the guidance necessary to proceed with participating in planned operations in order that tribes may avail themselves for Federal protection.

Since the favorable 1982 fifth circuit case of *Seminole* v. *Butterworth*, many tribes have turned to Indian gaming as a source of revenue for tribal government operations and programs. Like many others, Indian tribes are facing times of severe economic hardship and these difficulties are increased by Federal financial cutbacks to tribes, States, and local governments. Many tribes do not have the infrastructure or resources to attract industry. They have turned to gaming as a way to close the increasing gap between tribal resources and tribal needs.

Gaming enterprises have been a significant source of revenue and employment opportunities for Indian tribes. Some tribes have reduced their unemployment from 80 to 5 or 10 percent. Tribes have used such revenue for health clinics, roads, scholarships, and numerous other economic, governmental, and social efforts. We support this effort to strengthen tribal economic self-sufficiency.

As you well know, the Federal Government has always had a special relationship with Indian peoples of this country. In the context of that relationship, the United States has sought to foster and support tribal self-government, self-determination, and economic independence. This policy was clearly articulated in the Nixon administration and was reaffirmed by President Reagan in his policy statement on Indian affairs, issued in 1981.

The U.S. Congress has likewise acted by passing such legislation which affords tribes the same treatment as States with respect to tax-exempt obligations and other matters, as contained in the Indian Governmental Tax Status Act of 1982.

Furthermore, the Congress has implemented the policy of self-determination through the Indian Self-Determination Act, the Indian Finance Act, and other such legislation.

We see no reason why that policy should fail when now it comes to gaming on Indian reservations and lands. It is essential that the legislation that is currently being considered by this committee for the purpose of regulating Indian gaming activities on Indian land come from a perspective that will encourage that continued growth of the legitimate economic activities for tribes, exclusive of State jurisdiction.

While the States and the Federal Government have a legitimate concern to ensure that Indian reservations with gaming activities are free from organized crime and undesirable elements, a concern which is also shared by Indian people, the control over the regulatory process must remain with the Federal and tribal governments and not with the States.

The National Indian Gaming Association was formed to represent the interests of federally recognized Indian Governments that regulate and conduct gaming enterprises in Indian country. This association has consulted with the gaming tribes, the National Congress of American Indians, and the National Tribal Chairmen's Association, which have joined to protect these valuable sources of revenue from unwarranted, uninformed attacks by opponents of Indian self-sufficiency and determination.

The association supports H.R. 1920, as passed by the House of Representatives, as it comprehensively addresses the interests of tribes, States, and the Federal Government. The House, on April 21, 1986, passed H.R. 1920, which is similar to S. 902, in that it also establishes a Federal vehicle whose purpose is oversight on gaming on Indian land. This legislation was fully supported by the National Indian Gaming Association, the National Congress of American Indians, and the National Tribal Chairmen's Association. These bills maintain Indian tribes' right to self-government, as called for by the courts, while providing Federal regulations to ensure that the activity is carried out in a consistent and proper fashion.

The administration has also submitted a bill to the Senate. It is called the Indian Gaming Authorization and Regulation Act of 1986. Upon review of the administration bill, the National Indian Gaming Association is left with no alternative but to totally oppose this bill. This bill does not accurately represent the existing law, infringes upon tribal governments' jurisdictional authorities, and does not allow for an opportunity for tribal government to exercise discretion in regulating these activities on reservations. The bill subjects tribal government to State control aimed at limiting Indian gaming on reservations.

The rights to self-government of Indian tribes is clearly defined in the Civil Rights Act of 1968 and Public Law 83-280 authorizes the application of State criminal prohibiting laws in Indian reservations, but not civil regulatory laws.

Both S. 902 and H.R. 1920 are consistent with Federal statutes, case law, and congressional policy. The administration bill is not. The administration bill would establish bad precedent for States' regulation of Indian affairs, thereby contradicting acts of Congress and the courts.

The National Indian Gaming Association and its member tribes ask your support of our efforts to assure protection of Indian gaming on reservations and oppose all efforts to limit tribal sovereignty.

Mr. Chairman, we support House-passed bill H.R. 1920. We feel there are areas that need to be improved upon. We would like to submit a list of our recommendations for your consideration. That would be part of the testimony, and the memorandum attached will be with my testimony. Thank you very much.

[Prepared statement of Mr. Houle appears in the appendix.]

Mr. TAYLOR. Thank you. The record will remain open for at least 2 more weeks so we can receive that.

Mr. Powless?

Mr. POWLESS. Thank you, Mr. Chairman, for allowing us to present testimony here. My name is Purcell Powless, chairman of the Oneida Tribe. On behalf of the Oneida Tribe, we are very concerned about the legislation here. The Oneida also supports H.R. 1920 and S. 902. However, we are concerned about S. 2557, also referred to as the administration bill. The provisions of the administration bill are antithetical to legitimate and recognized governing rights of tribal governments.

In view of the fact that the committee has before it alternative legislation that is designed to better address the various interests mentioned above and that H.R. 1920 was arrived at in consultation with tribes affected, the Oneida Tribe urges you to reject S. 2557.

Specifically, the administration bill would create an entirely new level of Federal bureaucracy with which the tribes would have to deal. The three-person commission provided by this act would be political in nature, as they would serve at the will of the Secretary of the Interior and the Attorney General, and as the commission has sweeping powers to interfere with tribal gaming operations in a totally unprecedented manner, the act provided for ruinous assessments from which there would be no meaningful review.

Finally, if this act were passed as it is presently drafted, it would open the door to further infringements of other presently recognized governmental rights of tribes. If this act is passed as written, virtually all Indian gaming operations would be rendered unprofitable and thus killed along with all the good work which is being done with these revenues.

The indirect result will be increased dependence of tribal governments and Indian people on local, State, and Federal resources.

The passage of S. 2557 would be a step backward into the termination era of the 1950's and contradictory to the formal repudiation of H. Con. Res. 108 by President Reagan.

For the above-stated reasons and facts set forth, the Oneida Tribe of Wisconsin respectfully requests your support of H.R. 1920 and S. 902 and urges your rejection of S. 2557.

[Prepared statement of Mr. Powless appears in the appendix.]

Mr. POWLESS. I have with me a tribal attorney who may wish to add some comments here, Francis Skenadore.

Mr. TAYLOR. Mr. Skenadore, why don't you introduce yourself for the record?

Mr. SKENADORE. My name is Francis Skenadore. I am the attorney for the Oneida Tribe of Indians of Wisconsin.

Generally, the Oneida Tribe supports H.R. 1920 and Senate bill 902 because we feel they protect the interests of the Oneida Tribe of Wisconsin. But that doesn't mean that we do not concur with the amendments or changes that relate particularly to class III gambling proposed by the other tribes.

One additional thing I would like to mention here is that in the earlier testimony by Sheriff John Duffy, he made reference to the fact that Pan American Management Co. or one of its subsidiaries or companies is operating in Wisconsin. In asking him to particularly note the tribe he was talking about, he could not pinpoint what tribe Pan American was working with in Wisconsin.

The reason I raise the matter is that the tribes in Wisconsin take particular pride in saying that they can operate and run their own bingo operations and that there is no management companies in Wisconsin except for one tribe, which is the Winnebago, and was most recently demonstrated by the Menominee Tribe, who totally rejected an outside management company coming in.

Mr. TAYLOR. Mr. Powless, let me ask you. The Wisconsin Oneida Tribe, you have quite a successful game up there, and I think Chairman Gordon Dickie certainly threw a lot of credit to your tribe on what you have been able to do with the resources.

In conjunction with that bingo game, do you also have pull tabs or punchboards?

Mr. POWLESS. Yes; we do have pull tabs. Along with our success with bingo, a week ago Friday we just opened up a 202-room hotel. So without bingo, this would not be possible. In the hotel operation we have 70 full-time workers plus 80 part-time workers. Two-thirds of those people are Oneida Indians. So that has a big impact on employment on the reservation.

Mr. TAYLOR. You were able to put this facility together through tribal initiative rather than BIA.

Mr. POWLESS. Well, we had assistance with the Bureau of Indian Affairs in a guaranteed loan program. But the other part of it was a joint venture with development companies and our own credibility with local banks. We have a large share in a local bank through bingo enterprise moneys.

Mr. TAYLOR. Could you estimate the percentage of income that is generated between the pull tabs and the bingo: how much percentage would come in through pull tabs?

Mr. POWLESS. I would defer to our attorney. I am not familiar with the finances.

Mr. SKENADORE. The bingo operation is not dependent upon pull tabs. I would estimate the income from the pull tabs to be 15 to 20 percent of the gross revenue from our bingo operation. The majority is bingo proceeds.

Mr. TAYLOR. Mr. Houle, on your reservation do you have pull tabs or punchboards?

Mr. HOULE. Yes; we've been in operation since August 1980. We do have pull tabs, and I believe it would be fair to say that it would be in the same percentage, about 15 to 20 percent of the gross.

Mr. TAYLOR. I don't think I have any more questions at this time. You can supplement your testimony.

Mr. Skenadore, you look like you want to say something.

Mr. SKENADORE. No; thank you.

Mr. HOULE. Well, I did want to add, Mr. Chairman, that we would like to leave the record open for submission of more testimony from tribes of the association that have not submitted, and also some positive reports from the State Legislature of Michigan, and also statements from the city of Duluth in regards to the positive impacts of Indian gaming in the area and how it affects the economic base is that Arrowhead region.

[Material to be furnished appears in the appendix.]

Mr. TAYLOR. Fine. Thank you all very much.

Next we will hear from Mr. Raymond Field, executive director for the National Tribal Chairman's association.

STATEMENT OF RAYMOND FIELD, EXECUTIVE DIRECTOR, NATIONAL TRIBAL CHAIRMEN'S ASSOCIATION, WASHINGTON, DC

Mr. FIELD. Good afternoon, Mr. Chairman. The National Tribal Chairmen's Association, representing 185 federally recognized tribes from throughout the United States, and a constituency of approximately 400,000 federally recognized Indians, is pleased to present their testimony.

Gaming is a catchall phrase describing gambling. It could include such activities as casino-style card games, betting on dog and horseracing, dice games, and in some States bingo. The present discussion considers all forms of gaming on Indian lands. For the most part, this involves tribally controlled high-stakes bingo games. Indian gaming is currently an issue because of the overwhelming success of tribally operated bingo games, which has evoked a major adverse response from special-interest groups and the Bureau of Indian Affairs.

Specifically, State governments have sought to regulate gaming, and they are supported by the Bureau of Indian Affairs. It is useful to put this issue in context. Indian tribes, under the doctrine of tribal sovereignty, have the right to home rule on Indian lands which they occupy and have jurisdiction. Only the Federal Government may exercise regulatory jurisdiction over these activities. This right is embedded in article III of the Constitution and in the commerce clause.

The issue before this committee then is whether this Congress will further abrogate Indian rights to economic self-determination by extending the legislative right to control this activity through State governments.

The current administration has served notice to all tribes that we must reduce our direct dependence on public support and become more self-sufficient. As President Reagan has stated, "It is important to this concept of self-government that the tribes reduce their dependence on Federal funds by providing a greater percentage of their cost of their self-government." This addresses the issue of gaming on tribal lands.

I am presenting a study conducted by the National Tribal Chairmen's Association which discusses the economic benefits of gaming to Indian tribes and not only to Indian tribes but also how they impact upon the nearby communities of non-Indian people.

The issue of bingo as the economic development strategy for financing tribal governments first arose in *Seminole Indian Tribe* v. *Butterworth*, decided by the U.S. Court of Appeals for the Fifth District Circuit. In this case the court held that the States did not have regulatory jurisdiction over tribal bingo games.

In another landmark case, the Federal court in *Langley* v. *Ryder* upheld the tribal authority to engage in gaming on the basis of tribal sovereignty. The tribes' reaction to the *Butterworth* and *Ryder* cases has been swift. Many other tribes have moved to establish their own forms of gaming. Today approximately 102 of the Nation's 309 tribes are actively engaged in operating bingo halls. These tribes span over 20 States.

Test cases in other States are pending, as you have been aware of or have been apprised of by previous witnesses. The objections of States, many themselves actively engaged in gambling, is that tribal governments are the sole beneficiaries of gaming revenue. The National Tribal Chairmen's Association position is that State regulation and State requirements of Indian gaming is inappropriate for two reasons: one, because it violates the principle of tribal sovereignty; and two, because the economic benefit from Indian gaming can be a critical contribution to the Indian economy.

Mr. Chairman, throughout, for the past 3 to 4 months, I have received numerous calls from tribal chairmen throughout the United States who are extremely angry with the Department of the Interior and the Bureau of Indian Affairs. They are charged by Congress to consult with Indian tribes on major decisions impacting on those Indian tribes. There was no consultation with Indian tribes for S. 2557, the so-called administration bill. It was solely handed down as an edict, as was Secretary Swimmer's issuance of new gaming guidelines.

I received a call today from the esteemed statesman, Roger Jourdain, who is extremely angry that their tribe was not consulted. Many of our tribal chairmen do not want any form of regulation on their gaming. The reasons are because we have the right of self-determination, as described by President Reagan; two, that we have the right of self-government, as described by the Constitution, and that we have a government-to-government relationship with this country as established by our treaties too numerous to enumerate now.

We do want consultation on all forms of legislation, decisions, codes, rules, coming down that affect our people. The administration posits the threat of organized crime as a plight to our 185 federally recognized member tribes. Yet they cannot cite to the National Tribal Chairmen's Association, nor did they cite in the Interior hearings, a single case of a member of the National Tribal Chairmen's Association being violated of Federal criminal laws.

The issues that are being addressed by the Interior's bill, the administration's bill, is not the economic benefit that we derive from gaming. It is control: who controls the beneficial, lucurative aspects of gaming on Indian reservations? As articulated in the administration's bill S. 2557, the Department of the Interior and the Bureau of Indian Affairs have decided to divide control between the States and the Federal Government. Therefore, we oppose S. 2557. We do support H.R. 1920 and S. 902.

I would be pleased to answer any questions you may have, and I will make the full study and analysis available to your offices.

[Prepared statement of Mr. Field appears in the appendix.]

Mr. Taylor. Thank you very much, Mr. Field.

I don't believe I have any questions at this time. I would just note the error, which is forgivable since the bill was filed late last night. I understand it was the last thing to get filed. I think the number is 2557.

Mr. Field. 2557.

Mr. Taylor. If the court reporter would simply conform that number.

I thank you very much for your testimony.

Next we will hear from the United South and Eastern Tribes, Mr. Lionel John, treasurer, and Curtis Osceola, executive director.

Mr. John?

STATEMENT OF LIONEL JOHN, TREASURER, UNITED SOUTH AND EASTERN TRIBES, NASHVILLE, TN, ACCOMPANIED BY CURTIS OSCEOLA, EXECUTIVE DIRECTOR

Mr. John. Good afternoon, Mr. Chairman, members of the committee and staff. My name is Lionel John. I am treasurer of the United South and Eastern Tribes, Inc., and treasurer of the Seneca Nation of Indians. Appearing with me today is Curtis Osceola, executive director of USET and a member of the Miccosukee Tribe of Florida. Also with us is Carl Funkie, our consultant.

USET is an intertribal organization composed of 16 member tribes located in nine States along the south and eastern seaboard from Florida in the south to Maine in the north. USET, headquartered in Nashville, TN, was founded in 1968, is dedicated to promoting the economic and social welfare of its member tribes.

Currently seven members are actively engaged in gaming. Two additional tribes will be engaged in gaming within the next few months. In addition to their own games, two of our member tribes act as contract managers for other tribal gaming operations. Thus, within the year, 10 of our member tribes will benefit as owners and management contractors in 14 gaming operations. All these gaming operations involve bingo and pull tabs and, with the exception of one, are 100 percent owned by the respective tribes.

USET and the other tribes and organizations have previously testified to the beneficial uses that gaming revenue has been put, the negative social and economic conditions on most reservations, the tremendous impact that static and reduced Federal funding has had, the lack of a viable economic infrastructure or tax base on most reservations, and a lack of any evidence of organized criminal involvement in Indian gaming.

Rather than reiterate these conditions, impacts, and facts, we will just reference our testimony before this committee and proceed to discuss our views and recommendations relative to the respective legislative gaming measures pending before the committee.

This committee has before it two Indian gaming bills, S. 902 and H.R. 1920. Of course, we didn't know S. 2557 was brought in last night. While not formally introduced nor pending before the committee, the administration has transmitted a third bill entitled Indian Gambling Authorization and Regulation Act of 1986, for which they have been attempting to find a sponsor. But we will address our comments to all three measures.

USET was responsible for developing S. 902, sponsored by Senators DeConcini, Cohen, Mitchell, and Cranston. Thus, the member tribes of USET fully support the provisions of S. 902 and wish to thank the Senators for sponsoring this legislation.

Based upon the experience of the gaming tribes of USET, we feel that S. 902 is a well-balanced and adequate legislative measure to ensure the Indian gaming operations are conducted with accountability, honesty, and without involvement of unscrupulous or criminal elements from within or outside of the respective tribes.

S. 902 establishes all of the essential standards and safeguards and provides for essential sanctions for any violations of those standards which might be necessary for the proper operation of gaming activities on Indian reservations. The legislation would not authorize any tribes to engage in any gaming activity which is prohibited by State law. It merely recognizes the sovereign rights of tribes to regulate their own gaming activities if such activities were not otherwise prohibited by State law.

While S. 902 and H.R. 1920 are very similar in some respects, there are some very critical differences which would render H.R. 1920 unacceptable to the member tribes unless such provisions of H.R. 1920 are appropriately amended.

The administration's proposed bill is completely unacceptable to us, for reasons which will be made clear herein.

Regarding the commissions, section 11 of S. 902 authorizes the gaming tribes in the respective BIA areas to establish regional Indian gaming commissions in each of the respective BIA areas. Should the tribes in any given area not wish to establish such a commission, the Secretary of the Interior would regulate the conduct of Indian gaming pursuant to the specific standards established under the act.

Section 5 of H.R. 1920 authorizes the establishment of a national Indian gaming commission which would regulate Indian gaming pursuant to the specific standards established under the act.

Section 302 of the administrations' proposed bill purports to establish a commission within the Department of the Interior known as the American Indian Bingo Commission, which really isn't a commission at all, but rather only confers the title "commission" to three employees of the Secretary, whose selection, tenure, regulatory activities, budgets, support staff, legal counsel, and enforcement actions would be completely subject to the review, control, and approval of the Secretary.

Furthermore, while the administration's proposed bill does establish some specific standards for regulating bingo, most of the critical standards are not specified but, rather, left up to the commission to determine the regulations which would govern hours of gaming operations, prize money, entrance fees for patrons, who can be a bingo employee, and virtually every other essential aspect of tribal gaming.

In short, the administration's proposed bill would authorize the commissioners to establish regulations and conditions which could completely close down Indian bingo operations, and Indian tribes would have no legal basis to effectively challenge or object to what regulations might be imposed.

While the standards regulating the adoption of tribal gaming ordinances and the approval of gaming licenses and management contracts is more comprehensive under H.R. 1920 than S. 902, USET has no essential problems between the standards to be applied under either S. 902 or H.R. 1920, with the exception of the class III standards contained in H.R. 1920.

USET is also not particularly concerned about whether regional commissions or a national commission is established.

We are, however, deeply concerned about: One, the composition and selection of the commissioners and the chairman; two, the autonomy of the commission; three, the powers of the chairman vis-a-vis the commission as a whole; four, the autonomy of the commission to select its own staff; five, the autonomy of the commission to develop its own budget; and, six, the standards to be applied by the commission.

We have no problems with the provisions of S. 902 establishing regular Indian gaming commissions or the authority of such commissions. We do object to certain aspects of section 5 of H.R. 1920. First, it provides that the chairman of the commission be selected and appointed and serve at the pleasure of the Secretary of the Interior. While we do not object to the Secretary or the Attorney General selecting and appointing one member each of the commission, we strongly object to the Secretary appointing the chairman of the commission, particularly in light of the exclusive powers vested in the chairman pursuant to section 6.

We would recommend: that subsection 5(e) be amended such that both the chairman and the vice chairman be selected by a majority vote of the commissioners; that subparagraph 5(b)(1)(A) be amended to state that the Secretary may select and appoint a member; that subparagraph 5(b)(3)(B)(i) be amended to specify that the Secretary's appointed commissioners serve a term of 2 years rather than at his pleasure; and that subparagraph 5(b)(5) be amended such that any member can be removed from the commission for good cause, not excepting the chairman or Secretary's appointee.

The purpose of this legislation is to establish Federal standards and regulations for the conduct of Indian gaming, not to vest the Secretary of the Interior via a surrogate and vulnerable appointee with exclusive powers and subject to political influence.

Section 5(a) of H.R. 1920 purports to establish an indepedent commission. How independent can such a commission be if the chairman is selected and serves at the pleasure of the Secretary of the Interior, for no fixed term, who exercises exclusively the most critical authority vested in the commission and who cannot be removed for cause by the other commissioners? The answer should be obvious.

While we are cognizant that the chairman of the commission should carry out many of the initial authorities contained in H.R. 1920, we strongly recommend that the bill be amended such that the commission itself has either approval or appellate authority over the actions of the chairman in appropriate circumstances.

We therefore recommend the following amendments: One, that the "exclusive power" provisions of section 6(a) be deleted such that paragraphs (1) and (2) thereof become paragraphs of subsection (c) and that paragraph (3) of section 6(a) become a paragraph of subsection (b);

Two, that appropriate corresponding amendments be made to the following provisions to reflect the above amendments: section 8(b) line 1, following "Chairman", add "with the approval of the commission"; section 8(d) line 15, following the word "Chairman" add "or the Commission"; section 9 line 2, following "Chairman", add "or the Commissioner";

Sections 11, 12, and 13 should each be amended to provide for an appeal process to the commission similar to that provided for in section 14(b)(2) and to the Federal district court similar to that provided in section 14(c).

We also object to the provisions of section 5(b)(1)(D), which authorizes the appointment of the commissioner selected by the States. Indian tribes are separate sovereigns and are not subdivisions of the State governments. Tribes are not subject to the regulatory jurisdiction of the States. Pursuant to the U.S. Constitution and the treaties between the respective tribes and the United States, there is a government-to-government relationship between the respective tribes and the U.S. Government.

States have no authority to regulate Indian tribes and therefore should not participate in a Federal commission regulating Indian gaming. Allowing State participation in the commission is an erosion of the Federal-tribal government-to-government relationship. States should play no part, even through a Federal commission, in voting on issues affecting the sovereign rights of the tribes. There is no State in this country which has similarly provided a position for the Indian tribes within their State gaming commission. We therefore recommend that paragraph (D) of section 5(b)(1) be stricken from H.R. 1920.

The administration's proposed bill would establish a commission in name only. Three members of the commission would all be existing employees of the Secretary of the Interior or the Attorney General. All three commissioners would serve at the pleasure and be subject to removal without cause by the respective bosses. See section 302. This would prevent any independence of the commissioners and make them totally susceptible to partisan political control.

Additionally, all of the administrative services and all the staff of the so-called commission would be completely controlled and determined by the Secretary and what he determines is needed. The so-called commission would have no discretion, line authority, or control.

The Secretary would even control the selection and appointment of the commission's general counsel. The general counsel would provide all legal representation on legal disputes involving the commission, thus ensuring no independent legal counsel or thought outside that popular with the administration. See section 303.

Virtually all policies, rules, all policies, rules, and regulations of the commission would be subject to the approval of the Secretary. See section 304.

The commission's regulations and standards would be virtually unlimited. The totally openended authority given to the commission would enable them to have total discretion to restrict when and for how long a bingo game could operate, what prize money could be awarded, how much a tribe could charge for admission, who could be employed, and how much they can be paid; the unrestricted authority to determine who and under what conditions management contracts could be permitted, if at all. See section 305.

Apparently, "Brave New World" and "1984" have finally arrived. "Big Brother" wants to control everything. Forget checks and balances, objectivity, limits, standards, self-government, free enterprise, freedom to contract, competition, or anything else this country is supposed to represent.

If I had had a nightmare concerning what the administration was going to send up here, I couldn't have written it better.

There are also fundamental differences between S. 902, H.R. 1920, and the administration's proposed bill regarding the types of gaming operations which would be regulated and those which, although currently allowed under Federal court decision, would be prohibited or expressly placed under State regulation.

S. 902 does not distinguish between bingo/lotto/pull tab operations and casino/parimutuel operations. If any form of gaming operation is not criminally prohibited by the State, then Indian tribes would be permitted to engage in that gaming activity. This is the current state of the law.

S. 902 would require such gaming operations, regardless of the type, to comply with the regulatory standards established under the act. S. 902 would not prohibit or place any type of gaming which is currently legal under the regulatory jurisdiction of the States, but rather under the regulatory standards of the act.

This was the purpose of the USET member tribes and other tribes requesting gaming legislation be introduced in both the House and the Senate.

H.R. 1920, as amended in the House, distinguishes bingo, lotto, pull tabs as class II gaming, and casino and parimutuel operations as class III gaming. Class II gaming would be regulated by the commission pursuant to the specific standards established under the act. However, class III gaming would be treated much differently and in a manner totally unacceptable to the member tribes of USET as well as other tribes throughout the country.

Section 3 of H.R. 1920 would place a 4-year moratorium on any tribe wishing to engage in class III gaming operation, even though it would be legal for a tribe to do so under existing law. Section 21 of H.R. 1920 would require the Comptroller General to complete a study of class III gaming to determine whether tribes, States, or the Federal Government would be the best regulator of class III Indian gaming. Presumably, Congress would then have 2 years to consider any addition legislation regarding class III gaming before the moratorium expires.

Section 3 of H.R. 1920 also purports to grandfather in any class III gaming operations which was in existence prior to January 1, 1986. However, paragraph 3(c)(3)(B) requires that all such existing class III operations comply with regulatory standards which are substantially equivalent to those of the States. This latter provision would result in most of the existing class III operations having to close down, notwithstanding the grandfather clause, although this was not the intended effect.

H.R. 1920 was amended to establish the class distinctions and the different treatment of class II from class III gaming because of political and economic pressure put on some congressmen by casino and parimutuel operators and the States.

Is it because Indian tribes have a record of not being able to adequately operate and manage class III operations or operate fixed gaming operations? No, there is no such evidence. In fact, the evidence demonstrates just the opposite. Tribally operated class III gaming is well managed and cleanly operated. The privately owned, non-Indian, and State-operated and regulated class III games, by contrast, are replete with documented corruption, fixing, organized crime involvement. Look who is calling the kettle black.

If there is no demonstrated organized criminal element, no widespread mismanagement, or corruption documented in the tribally operated class III gaming, why then are the casino and parimutuel operators, and some of the States, urging Congress to prohibit or put class III Indian gaming under State regulation?

There is no documentable reason—other than money. The privately owned, State-operated, and State-taxed class III operation make a lot of money. It boils down to greed and a desire to prevent competition from the tribes. Anyone who pretends otherwise is either a fool or intellectually dishonest and self-interested. The lobbying conducted by some self-interested parties on the House side on behalf of this bill was, in many instances, distorted and dishonest.

We ask this committee and this Senate to deal with the facts and to make decisions based on the merits.

Mr. TAYLOR. Mr. John, if I might interrupt you for a minute.

Mr. JOHN. Yes.

Mr. TAYLOR. We will make this written statement part of the record. You have pretty well covered the bills themselves, and I see we move into a State legislative committee from Michigan and its study, and that certainly will become a part of the record. If I could, I would like to ask you if you could just summarize the remainder then.

Mr. JOHN. Inasmuch as you are entering the text of our statements into the record, I just had an observation on some of the testimony made earlier today, which I would like to comment on.

One gentleman, the sheriff, spoke about the difficulties in Public Law 83-280 States, and it seemed that the trouble he was referencing emanated from those States. That to me represented one fact, which is that Public Law 83-280 hasn't worked and that apparently is where all the problems that this gentleman's references occurred. I think that should be an indication that when—and the intent, as I understand it, of Public Law 83-280 was to put jurisdiction under the States. Well, you can see it for yourself. He's telling us it didn't work.

[Prepared statement of Mr. John appears in the appendix.]

Mr. TAYLOR. Mr. Osceola?

Mr. OSCEOLA. One quick comment. We would just like to express our enthusiasm for this bill. We would like to urge the committee to pass either S. 902 or H.R. 1920 or combine them, and let's get on with the business. You know, we've been with this for a long time, and we'd like to get this out of the way so we can make some clearer standards in place to work with. Thank you.

Mr. JOHN. I have just one parting comment on this whole business. I agree with Mr. Osceloa, let's move forward. Much of the testimony that you're hearing that I believe is coming from the States and from other interested organizations may be intended to prevent a bill from being passed in this Congress, and it may be in fact setting up that the States can win a case through the courts and perhaps that may not be in the best interests for all the Indians concerned.

I think it's imperative that this committee move something forward and get a bill out of this session of Congress that can enable Indian tribes to continue the advancement toward their own development. Thank you, Mr. Chairman.

Mr. TAYLOR. Thank you. I have one comment that might be of interest to the audience, particularly in light of the fact that the Supreme Court has taken jurisdiction over this *Cabazon* case. I have just been informed—I asked twice to be sure of it—but I understand Justice Burger has just resigned from the Supreme Court. I don't know whether it's health reasons or exactly what.

Thank you all very much.

Mr. JOHN. Thank you.

Mr. OSCEOLA. Thank you.

Next we will have Mr. Wade Miller, chairman of the Omaha Tribe of Nebraska.

Mr. Miller, I know you're trying to catch an airplane, so I am glad we could get to you before it takes off.

Mr. Miller is accompanied by the tribal attorney, John Peebles.

STATEMENT OF WADE MILLER, CHAIRMAN, OMAHA TRIBE OF NEBRASKA, MACY, NE, ACCOMPANIED BY JOHN PEEBLES, TRIBAL ATTORNEY

Mr. MILLER. Thank you. Mr. Chairman, as you stated, with me is Mr. John Peebles, our attorney, tribal attorney. I will try to expedite this so in order for my brothers and sisters from other tribes can be heard because it's kind of a long day.

Mr. TAYLOR. We would appreciate that. Your written testimony will be made a part of the record.

Mr. MILLER. Yes; and there will be some excerpts. For example, we have self-government, I will bypass that. Also, the one on self-determination. I will briefly go over others.

The purpose of my appearing here today is to provide testimony in support of S. 902 in a form which would allow an Indian tribe to deal, operate, carry on, conduct, or maintain for pay any banking or percentage game or other game of chance played for money, property, credit, or any represented value which is conducted pursuant to a tribal ordinance or resolution adopted by an Indian tribal government which is not prohibited by any specific Federal law prohibiting gaming activity.

The Omaha Tribe of Nebraska supports enactment of legislation which would allow the Secretary of the Interior to approve a tribal ordinance or resolution concerning the conduct, licensing, or regulation of gaming activity within the tribe's jurisdiction, but opposes any legislation which limits the jurisdiction of an Indian tribe, including the acquisition of off-reservation property to be held in trust status.

Specifically, the Omaha Tribe of Nebraska opposes any modification of S. 902 which would: Submit the tribe to the regulatory authority of any State or State agency regarding gaming activity; requiring a tribe to establish regulations or licensing requirements that are related to State regulations or licensing governing similar gaming within the jurisdiction of a State in which said tribe is located; also in any waiving of the sovereign immunity of the Indian tribe; require the Federal Government to license Indian tribes to operate any form of gaming activities; and finally, prevent an Indian tribe from regulating the day-to-day operations of the gaming activities within its jurisdiction.

As I stated, I shall go over to the economic criteria. The current Federal policy is to encourage and foster tribal self-government and to promote reservation economic development. This Federal policy was further evidenced in President Reagan's statement, as Mr. Field, the director of the NTCA stated, and I will reiterate again—and I quote:

"It is important to the concept of a self-government that tribes reduces their dependence on Federal funds by providing a greater percentage of cost of their self-government." The statement made by the President of the United States on Indian policy, White House, January 24, 1983.

The bingo games have been recognized as one way to support this policy. A policy directive issued by the Assistant Secretary of the Interior on March 2, 1983, stated that the Department of the Interior would strongly oppose any legislation that would subject Indian individuals, Indian organizations, and tribal governments to State laws with regard to licensing, or prohibiting of gambling on Indian reservations.

Now, a number of tribes have begun to engage in bingo and similar gaming operations on their reservations for the very purpose enunciated in the President's message. Given often limited resources which tribes have for revenue-producing activities that this kind of revenue-producing possibility should be protected and enhanced. Tribal gaming enterprises are an appropriate means by which tribes can further their economic self-sufficiency, the economic development on reservations and tribal self-determination.

All these are Federal goals for the tribes. Furthermore, the development of tribal gaming enterprises is consistent with and in the furtherance of President Reagan's Indian policy statement of January 24, 1983.

Finally, it is clear that numerous State and local governments have engaged in various forms of gaming activities to raise revenues for the administration of government. The Omaha Tribe of Nebraska requests that the U.S. Government not penalize its efforts to increase its economic self-sufficiency and development. The gaming activities will produce income for the tribe which will be used for legitimate governmental functions along with employment of members of the tribe.

In a time when Federal funds are being reduced and a greater responsibility placed on the tribal government, it is hardly a time to limit the income-producing mechanism for which the tribe can legitimately exercise its sovereign powers.

Mr. Chairman, I would like at this time to make a final point in regard to this morning's reference to the survey that was sent out by the Bureau. I would like to inform you we were not contacted for this data. To us, this is an example of the Bureau of Indian Affairs not communicating with the tribes and also with the Justice Department. They do not do that with us. Thank you.

[Prepared statement of Mr. Miller appears in the appendix.]

Mr. TAYLOR. Mr. Miller, when did you start your games?

Mr. MILLER. We started about 1982. We have a small operation.

Mr. TAYLOR. That was during the time that survey was taken?

Mr. MILLER. Yes.

Mr. TAYLOR. Mr. Peebles, would you like to add anything?

Mr. PEEBLES. No; I have nothing.

Mr. TAYLOR. I don't have any questions.

Mr. MILLER. We thank you for the opportunity of appearing here. Thank you.

Mr. TAYLOR. We hope you make your plane. Thank you.

Next we will hear from Gilbert Pena, chairman of the All-Indian Pueblo Council; and Gov. Alvino Lucero, chairman of the Southern Pueblos Governors' Council.

STATEMENT OF GILBERT PENA, CHAIRMAN, ALL-INDIAN PUEBLO COUNCIL, ALBUQUERQUE, NM, ACCOMPANIED BY ALVINO LUCERO, CHAIRMAN, SOUTHERN PUEBLOS GOVERNORS' COUNCIL, ALBUQUERQUE, NM

Mr. PENA. Thank you, Mr. Chairman, for giving us this opportunity to testify on the present legislation pending. We will be brief for the sake of time. We have a joint statement that has been submitted for the record on behalf of the All-Indian Pueblo Council and the Southern Pueblos Governors' Council.

Mr. TAYLOR. You are Mr. Pena?

Mr. PENA. Pardon?

Mr. TAYLOR. You're Mr. Pena?

Mr. PENA. Yes, sir.

Mr. TAYLOR. All right.

Mr. PENA. We support the provisions of H.R. 1920. However, there are certain segments of that particular bill that we certainly are opposed to, specifically State jurisdiction in any way, shape, or form, and obviously the moratorium.

I would like to have Governor Lucero summarize our statement for the record, sir.

Mr. TAYLOR. Thank you.

Mr. LUCERO. Thank you very much, Mr. Chairman. We appreciate the opportunity to be here today. Of course, Mr. Pena is summarizing part of our statement here.

Mr. TAYLOR. Your statement, by the way, will be made a part of the record.

Mr. LUCERO. Yes; I have an oral statement, and the written statement I have already submitted, Mr. Chairman.

Mr. Pena is chairman of the All-Indian Pueblo Council, whose membership supports, by resolution that is attached to my statement, Senate passage of H.R. 1920, as passed by the House April 21.

Our Southern Pueblo Governors' Council includes two pueblos operating successful bingo enterprises, Acoma and Sandia, and my pueblo is nearing startup for its bingo business. As a matter of fact, we broke ground 2 weeks ago. Similarly, Santa Ana Pueblo is well along in its efforts to startup a tribally owned racing facility which would have parimutuel wagering on races. I think this is what started the whole thing.

This legislation is important to us for both businesses and protection of tribal sovereignty reasons. Our support for H.R. 1920 is dependent on a Senate-passed bill that does not include State-imposed jurisdiction for any class or form of Indian reservation gaming. We reluctantly support the House-passed bill, however, oppose any requirement of a moratorium. We oppose any State-imposed jurisdiction. Joint powers agreements and other forms of consensual tribal-State agreements are different. Those are acceptable.

We strongly oppose the administration version of this legislation recently introduced by request to this committee. We support H.R. 1920 without the moratorium because it does not change the present delicate balance of Federal and State jurisdiction on Indian reservations. The House-passed moratorium is contrary to current Federal law. These Pueblos, as sovereign entities, should not be prohibited from using their powers of self-government to have gaming enterprises that are legal and ongoing under State law and that are not specifically prohibited by Federal law.

On the other hand, legislation like this, where the question of Federal versus State jurisdiction on Indian reservations is being debated, has the potential to inadvertently set precedent for the ceding of Federal jurisdiction to the States. We ask this committee to be extremely vigilant in reporting this legislation so that a possible departure from existing legal and legislative precedents safeguarding tribal sovereignty does not become cause for the States to seek further inroads into jurisdiction over Indian reservations.

We ask the committee to delete the requirement of a moratorium present in H.R. 1920 and to reject any proposed amendments to H.R. 1920 that would regulate and control Indian-country gambling by State law.

Besides requesting committee rejection of State regulation of Indian reservation gaming, we also ask the committee not to adopt any provisions that would restrict tribal bingo enterprises from offering base pay plus percentage of the revenue to key enterprise employees. This incentive is standard in the business world, and to deny its use would be contrary to past congressional policy concerning tribal economic activities and would run counter to the goal of current administration Indian policy which is to promote tribal self-government and reservation economic development.

Attached to my statement is the May 1986 letter to Congress describing the administration's version of this legislation. The letter states that the Interior Secretary and the Attorney General have the right to dismiss at pleasure and appoint the Indian gaming commission.

The administration bill also asks for 100 percent of the budget for this Federal regulatory body to be paid for from proceeds of the gaming tribes. In fairness both to the public policy being decided in this legislation and to tribes who are using these gaming proceeds to try to offset the continuing Federal budget reductions begun 5 years ago, we recommend three amendments to H.R. 1920:

One, that the 4-year moratorium be eliminated; two, that commission members be presidentially appointed subject to Senate confirmation; and three, that the Federal Government and the gaming tribes become 50-50 partners in paying for the costs of this federally controlled commission.

This concludes my testimony, Mr. Chairman. I would be glad to answer any questions you might have.

[Prepared statement of Mr. Lucero appears in the appendix.]

Mr. TAYLOR. Governor, I don't think I have any questions. What is your Pueblo? We failed to get that on the witness list.

Mr. LUCERO. Isleta Pueblo. I am the Governor from Isleta Pueblo.

Mr. TAYLOR. You are just getting ready to open your operation?

Mr. LUCERO. Yes; we are. We got into a management agreement with a company from London, England, British-American Bingo, Inc. We broke ground 2 weeks ago, on or about 2 weeks ago. We hope to get started by the end of August. So we are in the process right now.

Mr. TAYLOR. Thank you very much.

Mr. LUCERO. Thank you.

Mr. TAYLOR. Thank you, sir. We have no questions.

Next we will hear from Dan McCoy, chairman of the Eastern Band of Cherokee.

STATEMENT OF DAN McCOY, CHAIRMAN, TRIBAL COUNCIL, EASTERN BAND OF CHEROKEE, CHEROKEE, NC

Mr. McCOY. Thank you, Mr. Chairman, for allowing me to testify today. First I would like to correct the record. I am not the chairman of the tribe. I am chairman of the tribal council. We have two different people in those categories at home.

I have submitted a written testimony for the record, and I don't want to get too far into that in lieu of time. I have a plane to catch, too. But mine is a little later.

But I would like to express that we are, the Eastern Band of Cherokee Indians, a member of the USET Tribes and the USET organization that testified earlier, and we support that position that they submitted. But we do have a couple of requests in our own personal position paper that we submitted.

One of those is involved with the 2.5-percent assessment in H.R. 1920, that particularly to our tribe would be detrimental to the income to the tribe if we have to assess the 2.5-percent against our program.

As you know, we advertise that we operate the world's largest bingo. Our revenue at the end of the year is not as great as those of other tribes because we only play twice a month, but we do play large games. So that 2.5-percent assessment we feel would need to be done on a profit-audited statement at the end of the year to justify and not be detrimental to the income to the tribes or to our people.

You might be interested to know that our management company—and you heard the gentleman—I guess it was the sheriff of San Diego County—testify earlier about organized crime. Indian people hear that every day. Every time you talk to someone on the outside of an Indian tribe, the first thing he speaks of is organized crime. I would say there is no organized crime involved in our operation, and we deal with a considerable amount of money in one weekend.

You are going to hear that, I guess, from any opposition group that comes in. The first thing they would tell you would be about organized crime. I would think that the importance of H.R. 1920 and S. 902 would force Indian tribes to divest themselves of any organized crime figures that were in their operations.

In my testimony that was submitted, I spelled out clearly in there the benefits that bingo revenues have provided to our tribe as far as our school system is concerned. I will not get into those. But I do want you to make a note of those.

One of the other things that was very important to our tribe that is maybe a little different from the USET testimony is the seven-member committee or commission or whatever you want to call it that is mentioned in S. 902. We request and would like to see, I believe it is, a nine-member committee: one from Justice, one from the administration, and seven from somewhere else. But we would like to see those seven other members appointed from tribes that are involved in bingo or any other kind of gaming in order to keep the interests of the tribes at heart in this particular committee.

We also even go so far as trying to follow along with H.R. 1920 that those members not be involved in any of the management companies with the bingo operations on the local level with the tribes. I am very familiar with that because I had to divest my interest in the operation in order to stay as chairman.

Just sort of hitting my notes here on the testimony to let you have that as part of the record, I didn't know what to call the bill that the administration submitted, but after I got here I learned the number was S. 2557 and was submitted last night. I would like to request that somebody in Washington, DC, send me a copy of that whenever they get it, or I may have to make a trip up here to pick it up myself.

But I look at that situation with the administration again as the old dictatorship of Bureau of Indian Affairs over the tribes. It seems to me in the past that any time an Indian tribe comes up with something that is lucrative for that tribe, the Bureau wants to get involved in it and control it for them, that it's going to be, so to speak, the Big Brother situation and look after the tribes. But when they come in and do this, they come in with a set of rules and regulations that the tribe can't live with. Then you get totally away from Indian self-determination, which I mentioned in my testimony also. Indian self-determination was giving the Indian tribes the right to determine their own destiny and to do their own business.

So I can't speak for my tribe right now, but I am sure that we will take a voice vote on it Thursday and we will be strongly opposed to S. 2557, as it is.

I think I covered it all, I mean, what's in my testimony.

[Prepared statement of Mr. McCoy appears in the appendix.]

Mr. TAYLOR. Your testimony will be made a part of the record. You indicated that you had to divest yourself of some interest in the gaming operation at Eastern Cherokee when you took your position on the council. Is that gaming operation tribally owned or individually owned?

Mr. McCOY. The gaming operation falls under, right now by the law that is pending from Swimmer's offices—the regulations which were never put out for comment, I would like to say, which are, in my opinion and my opinion only, just a set of rules that anybody could have written down, but I don't think I'm going to repeat them; I think other tribes will agree with me on that.

But going by those rules and regulations that he handed down and by the implementations of H.R. 1920 issued and in order to save a lot of controversy and a lot of trouble and a lot of problems between our tribe, the BIA, and other people, then I felt that it would be better—and this was my decision—to divest myself of any interest in the operation.

Mr. TAYLOR. Well, but is the operation owned by the tribe or is it——

Mr. McCOY. The operation, see, it's owned by the tribe. It is owned by the tribe and franchised, you might say, to another Indian person at home and our own member of the tribe that has the management agreement.

Mr. TAYLOR. I see.

Mr. McCOY. We do have non-Indian members a part of that operation, but we all—and then I might go back and contest a little bit what the sheriff—I guess it was the sheriff from San Diego County said. All of our people were checked out by the FBI. We did cooperate with them and provide them with all the Social Security numbers, whatever they needed, addresses or whatever.

Mr. TAYLOR. Could you tell me the name of the management company that is involved there?

Mr. McCOY. Yes; at Cherokee now, it's Young Management Services, Inc.

Mr. TAYLOR. What was it?

Mr. McCOY. Young Management Services, Inc. Before, it was McCoy, Young, Associates, Inc. That was me.

But anyway, I would like to express my appreciation for being allowed to testify today, and any time you have any questions about our operation, we would be more than happy to answer them.

Mr. TAYLOR. Thank you very much.

Mr. McCoy. Thank you.

Mr. Taylor. Our next witness is Don LaPointe from the Keweenaw Band of Chippewa. I don't know if Mr. LaPointe is here today. I don't think he made it.

We now have a panel from Oklahoma: Ronald D. Fixico, United Indian Nations in Oklahoma; Perry Beaver, second chief of the Muscogee Creek Nation; Gaylon Franklin, second chief, Sac and Fox Tribe; and Raymond L. Butler, Jr., the chairman of the Otoe-Missouria, accompanied by William Burns, a consultant.

I appreciate very much being able to put a panel together from Oklahoma.

Mr. Fixico, the mike is right in front of you, so maybe we ought to start with you.

STATEMENT OF RONALD D. FIXICO, UNITED INDIAN NATIONS IN OKLAHOMA, OKMULGEE, OK

Mr. Fixico. Mr. Chairman, and honorable members of the Senate Select Committee on Indian Affairs, I am Ronald Fixico, chairman of the United Indian Nations in Oklahoma Gaming and Taxation Committee. I forward to you today greetings from the 23 member tribes, bands, and nations of the United Indian Nations in Oklahoma.

For the record, I would like to read the member tribes: the Eastern Shawnee Tribe, the Delaware Eastern Tribe, the Kiowa Tribe, the Iowa Tribe, the Muscogee (Creek) Nation, Thlopthlocco Tribal Town, The Caddo Tribe, The Seneca Cayuga Tribe, Apache Tribe, the Chickasaw Nation, the Kaw Tribe, Tonkawa Tribe, the absentee Shawnee Tribe, the Delaware Western Tribe, the Pawnee Tribe, Otoe-Missouria Tribe, the Fort Sill Apache, the Ponca Tribe, the Sac and Fox Tribe, the Wyandotte Tribe, the Cheyenne-Arapaho Tribe, the Comanche Tribe, and the Seminole Nation.

The Federal proposed national gaming commission represents the practical efforts of practical men to deal with the supposed problems of the Indian gaming industry wherein the greater society is presented with too many conflicts of interest. It will be hard for the national gaming commission to measure up to its responsibilities if its practitioners and its critics seek to submerge it in the color of State policy, against the substantive Federal court decisions or the executive policies that influence the Indian affairs in this Nation.

The regulatory program which this country has elected to enact cannot do its work effectively without the cooperation of all parties under its administration. However, it is just such issues at hand, the Indian gaming industry, limited issue that it is, which is open for opinion before the Senate committee today. When we contribute to this side of the Senate workload, it is with some degree of earned expertise that we the United Indian Nations in Oklahoma offer our view of issues relevant to gaming.

The United Indian Nations in Oklahoma assert the following, which is the preamble of our proposed UINO Indian gaming commission we are in the process of forming:

The continued existence of free and sovereign Indian nations depends upon the recognition of the concept that the Indian people have the right and self-duty to secure the respect and dignity for the individual and his tribe through self-determination and reason for enlightened self-government. Actions so grounded make possible prosperity, for only through such action does the dignity of the Indian people attain respect and protection.

Gaming as a source of revenue plays a vital role in the preservation of Indian self-government. The fulfillment of this role requires an understanding by those participating of their relationship with and function in the Indian macroeconomic system. A consequent obligation of the Indian tribes, bands, and nations in Oklahoma is to maintain the highest standards of ethical conduct.

The Federal courts have paid a consistent tribute to the rights of Indian peoples to conduct gaming within Indian country. Recent Federal court decisions in Oklahoma reduce or eliminate the doubt of any skeptic, but would not and could not alter or change opinions set against these judicial findings.

Meanwhile, various sources propose Federal regulatory activity assessments to be levied against tribal gaming operations at different percentages of gross. We the UINO in Oklahoma oppose any levies sanctioned by Congress wherein the scope of review activity passes from local jurisdiction and Indian review and control of expenditures.

The passive attitude of these United Indian Nations is coming to a close. We the United Indian Nations in Oklahoma are programming toward establishing what is necessary to protect gaming in our Indian country.

In summary, it is the position of the United Indian Nations in Oklahoma that friction between the State and other entities against gaming in Indian country can best be treated with fairness by Federal intervention consistent with Federal court findings.

Further, we oppose any levy against tribal operations as being unbearable while present economic conditions exist and present Federal cutbacks continue to slowly renege on treaties made between the sovereign Indian nations and this Federal Government.

Further, we continue to hold fast to our position that the Indian gaming presently is conducted and regulated on a far higher level of competency than State-regulated gaming activity. We, the United Indian Nations in Oklahoma, in the process of developing uniformity in our industry, believe that we are capable of regulating gaming activity in Oklahoma in any area we so desire to exercise our sovereignty with such choice as compatible with Federal, not State law.

In closing, we believe ourselves to be not limited in our abilities, but unlimited, and a very capable, industrious, unique citizenry within this country that chooses to exercise our rights and privileges to take the Indian gaming industry to a more sophisticated level of regulatory conduct with or without State consent. We desire to enhance the legitimate gaming activity in Indian country and to assist its growth wherever possible because we believe we are sovereign within limits set by Congress and by no others.

The UINO forwards to you, the legislators and lawmakers, to the Indian gaming industry, not a blind and unreasoning commitment of support but a wish to success. The Indian people of Oklahoma desire to continue to bring forth essential revenues from this legitimate industry they have embraced.

I want to thank you today for allowing me the opportunity to present the views of the United Indian Nations in Oklahoma. Sir, I would like to stipulate that the record be kept open for our organization so that we may make response to S. 2557, and also that we may bring forward to this committee's review certain financial revenue statements so that this committee can make assessment as to what type of harm would be done to net revenues of our tribal operations when or if an excessive charge is placed against tribal operations for regulatory financing.

[Prepared statement of Mr. Fixico appears in the appendix.]

Mr. TAYLOR. The record will remain open at least 2 weeks, and we would be happy to receive any information you can supply.

Mr. McCOY. Thank you very much.

[Material not available at time of printing.]

Mr. TAYLOR. Mr. Beaver, why don't we move to you, since I met with you yesterday, along with Mr. Fixico. Your written statement will be made a part of the record. So if you could, please summarize.

STATEMENT OF PERRY BEAVER, SECOND CHIEF, MUSCOGEE (CREEK) NATION, OKMULGEE, OK

Mr. BEAVER. I am Perry Beaver, second chief of the Muscogee Creek Nation, speaking on behalf of Claude A. Cox, principal chief, and the Muscogee Creek Nation.

Also, there are two attachments along with the statement: the Creek Nation Gaming Code NCA84-04; and the Federal court decision by district court Judge James O. Ellison.

For the past 1½ years the Muscogee Creek Nation has been actually engaged in the operation of a bingo facility. Therefore, our comments on H.R. 1920 and other related proposed legislation to federally Indian gaming are essential to the well-being of our tribal venture.

Mr. Chairman, I will skip over this part since it's part of our attachment, and all it says is that according to the judge's decision, we are a sovereign nation and we are in control of our gaming operation by our gaming code.

Now, let's go on further here. It says,

> Any further order not to interfere with any peaceful operation of such games or to padlock or otherwise attempt to close or impair the operation of the tribal bingo enterprise and to the Oklahoma tax commission to refrain from entering onto the lands of the tribal bingo enterprise.

This came out of his court decision.

This Superfund legislation caused by the State of Oklahoma, plus the fact they have filed an appeal, and the recent request from 20 State attorneys general for the U.S. Supreme Court to decide whether State and local governments may regulate Indian bingo games, leads the Muscogee Creek Nation to believe Federal regulation is necessary and should be completed in an expedited manner.

However, there are overriding elements we wish to make issue with on property and the regulatory process in H.R. 1920 and S.

902, and the administration's proposed bill—I forgot that number which was identified.

All right. These are some of our issues and recommendations: Section 3(a), the proposed boundary policy has created problems with the trust status issue, in that the Assistant Secretary of the Interior is disregarding the tribe's historical boundary to be inclusive of our entire Nation. Since the tribe owns parcels of land within our boundary, the Assistant Secretary will not place these locations within the trust because some of them are not adjacent to existing trust properties.

For the past 15 years the Muscogee Creek Nation has been acquiring once-owned property to rebuild our tribal land base. The Secretary's failure to comply with the trust responsibility has impeded our tribal economic development.

The Muscogee Creek Nation feels that the Assistant Secretary is using proposed policy in the wrong light and his imposition is creating hardship on our tribal government. The Muscogee Creek Nation recommends section 3(a) of H.R. 1920 be amended and language added to include "with the exception of Oklahoma tribes; any land within their historical boundaries may be placed into trust status."

Some other are No. 2: H.R. 1920 section 17(a), and S. 902 section 11(e). The Muscogee Creek Nation strongly objects to full assessment from tribal gaming enterprises to fund the commission's budget. We recommend a substantial portion of the commission's budget as being part of the Federal budget because most of the commission's role is to exercise trust functions normally carried out and paid for in the Department of the Interior.

Three, Commission appointments. H.R. 1920 section 4(b). The Muscogee Creek Nation is concerned about the Assistant Secretary having the ultimate power over the commission because he has publicly criticized Indian bingo in the press, stating, "It is the wrong kind of tribal economic development because it doesn't encourage the work ethic." This came out in the Tulsa Tribune in Washington, December 23, 1985; and "Perhaps bingo is a stepping stone, but is can be a stopping point as well." This is in the Daily Times, the Washington Bureau, October 17, 1985.

These statements combined with our own tribal dealings with the Assistant Secretary, influence the tribe's thinking that the preeminent authority of the commission should be within the membership, and we also recommend a majority Indian membership, with the members being selected on a regional basis, thus assuring the Muscogee Creek Nation interests as well as those Oklahoma tribal interests are reflected by the commission.

Next is the Indian Gaming Authorization and Regulation Act of 1986. I think this is S. 2557. The Muscogee Creek Nation questions the intent of this proposed legislation and feels it will be devastating to the tribes if enacted. The proposed legislation too narrowly defines bingo operations and is an inappropriate and unlawful intrusion on our tribes' sovereign rights to govern our own activities by placing gaming control within State jurisdiction. You can see attachment No. 2, the Judge Ellison decision, in its entirety.

Again, thank you for the opportunity for the Muscogee Creek Nation to express our views about the Indian gaming regulations. Thank you, Mr. Chairman.

[Prepared statement of Mr. Beaver appears in the appendix.]

Mr. TAYLOR. Thank you, Mr. Beaver.

Since we're moving toward the right, let me go on there to Chairman Butler and Mr. Burns, and then we will come back to you, Mr. Franklin.

STATEMENT OF RAYMOND L. BUTLER, JR., CHAIRMAN, OTOE-MISSOURIA TRIBE, RED ROCK, OK, ACCOMPANIED BY WILLIAM BURNS, CONSULTANT

Mr. BUTLER. Thank you Mr. Chairman. I am Raymond Butler, Jr., of the Otoe-Missouria Tribe. I want to thank you for the opportunity to apppear today to make a brief statement—very brief; I have a plan to catch also. I am here to express several concerns about S. 902, H.R. 1920, the Indian Gaming Authorization and Regulation Act. They all reflect inconsistencies and infringements of the tribal jurisdiction.

We have our sovereignty; we want to try to maintain it. We want to try to be self-sufficient, as some of the stories that the President of the United States is saying. They want us to try to get off some of the Federal Government programs and be self-sufficient. That's what we're trying to do, and then when we turn the corner to go, well, then they tie our hands up again and we can't go any further. That's what we're here for today.

They have tried this for 30-some years, and they haven't come up with anything. We are trying to help ourselves here. What we're here for is that on bingo, I heard a fellow here in some of the testimony today talking about the largest bingo. I don't know how big his place is, but we average 4,500 per session, and we play twice a month. We know what we're getting at the end of each month. We've turned that revenue into wise factors for our tribe. Come Christmas time we pay out a per capita payment to each tribal member so that they could—the little children—could benefit from the enterprise we have there. At the end of the school year we give another per capita payment for them to enjoy their summer activities.

Then we've also open up a $200,000 convenience store. We didn't get any funds from the Federal Government. We paid for that ourselves from our revenues.

We started out in this bingo here, operating itself, at $20 a game. Now we're up into the thousands of dollars. We have people coming from all over the United States, not locally but all over. The State hollers about not getting their share. We are in, you might say, the most remote area of the United States, where the closest town we have is Red Rock, OK, counting everybody and the mainstreet dogs, our population is a little over 400 people.

We have one highway coming in and going out. I don't see how organized crime could get in there. We have no airstrips. But we utilize the funds that we have from this to help not only the youngest child on the reservation, our tribal land—we're not reservation Indians; Oklahoma is not reservation Indian—we help the youngest and we also help the oldest, the elders. This is what we're doing without revenues.

I feel at this time reasonably opposed to some of these laws. We have the capabilities of regulating our own games, negotiating our own contracts. The Bureau, one of the testimonies today from the Bureau said they couldn't get any response from the tribes. They're aware of all of our revenues. It goes through their office. I didn't know where they got that point of it. But they are aware of all of our activities.

But we're trying to set up our own judicial system through the revenues here, hopefully. We may have to come back to the Federal Government for some help there. But we have law and order, and it's all—everything is run in an orderly manner. I have heard a lot of good testimonies today, and I have heard some harsh testimonies, but I feel that we are capable of handling our own.

If it comes to supporting the House bill along with Mr. Beaver here, I think there is some amendments that have to be done on it.

But I would like to say thank you for this opportunity here, and hopefully, you will recognize our testimony.

[Prepared statement of Mr. Butler appears in the appendix.]

Mr. TAYLOR. Thank you very much.

Mr. Burns, do you have any comments you would like to add?

I am a little slow finding my place here.

Mr. BURNS. Thank you, Mr. Chairman. I want to thank you for the opportunity to be here today, and I would like to try to issue our statement on behalf of our tribal chairman. We are here today to express several concerns, especially in the S. 902, H.R. 1920, and the Indian Gaming Authorization and Regulation Act. Also, we are totally unfamiliar with the S. 2557—all of which reflect inconsistencies, infringement on title jurisdictions, and will prove to be detrimental to Indian gaming. Any legislation to regulate gaming will prevent the tribes from carrying out tribal prerogatives and progressing.

The State of Oklahoma hasn't been able to assist Indian tribes in financial support, that is to let alone to have any of the capabilities of regulating tribal activities. Any State intervention will certainly impede the progress of the tribes which we have now made.

In general terms, the Indian tribes, the States, and the Federal Government all share and have in common the same type of problem, which are: Not enough funds to assist the Government responsibilities, decrease in funds for human services, decentralization of Government services, and the new tax reform options to reduce the Federal deficit. This will affect everyone.

The Otoe-Missouria Tribe had an unemployment rate of about 62 percent in 1981. Because of the existing gaming revenues, the tribe is now making progress in various phases of development. The ultimate goal of the Otoe-Missouria Tribe has been to alleviate the chronic poverty and the chronic unemployment. These two problems now being currently addressed by Federal agencies and programs have tried for 30 years to do the same thing, but this has been with no success.

The basic needs and services are being met. The Otoe-Missouria Tribe provides police protection, water services, and other services in a nondiscriminatory manner for the Indian and the non-Indian.

Enterprise projects have been implemented, providing some employment for our particular area. The local communities in our area, the businesses, services people, county Governments, all receive benefits from the gaming activities, and they also share in the revenue. Local trade and employment is up in our area, as material and supplies are purchased locally from our non-Indian people, and the overall area economy has shown some improvement.

Also, it should be brought to the attention that the Indian tribes have administered capabilities to manage and account for their activities whether they are physical or managerial.

The Otoe-Missouria Tribe of Oklahoma is opposed to any legislation that will advocate any State jurisdiction, undermine tribal authorities, and affect tribal economic development. We urge you, the chairman, and the committee members to consider policy that will help the Indian people.

We are strongly opposed to any type of State regulation.

I want to thank you again very much.

Mr. **Taylor**. Just one question. You mentioned the Otoe-Missouria Tribe providing water and something else on a nondiscriminatory basis. What was that other?

Mr. **Burns**. Police protection.

Mr. **Taylor**. Police protection. How large a population areas are you serving there?

Mr. **Burns**. OK. The Otoe-Missouria Tribe is 1,300 people. What we're talking about is—are you referring to our tribal police?

Mr. **Taylor**. Well, let's start with that, yes.

Mr. **Burns**. OK, 20,000 acres.

Mr. **Taylor**. How about the water, where is that? Is that in the town?

Mr. **Burns**. We contract our water now from an organization which is independent of the Indian nation.

Mr. **Taylor**. And you're doing this through the proceeds from this bingo operation?

Mr. **Burns**. It is assisting, yes.

Mr. **Taylor**. I was just interested in that.

Mr. Franklin.

STATEMENT OF GAYLON R. FRANKLIN, SECOND CHIEF, SAC AND FOX TRIBE OF INDIANS, STROUD, OK

Mr. **Franklin**. Mr. Chairman, I thank you for this opportunity to speak to this committee. My name is Gaylon Franklin. I am second chief of the Sac and Fox Tribe. We are members of the United Indian Nations in Oklahoma, as previously stated, and we are also members of the United Tribes of Oklahoma and Kansas, who have gone on record in support of legislation that would preempt State jurisdiction over Indian country and that would allow tribal Governments to function without the burden of unneeded regulation or restrictions.

The Sac and Fox, in recent years, through a lot of hard work has enjoyed a prosperity that has been unmatched in the history of the tribe. This prosperity has endured in spite of several cutbacks in Federal funding, and this is because the tribe has enacted laws that govern activities within our jurisdiction. These laws govern activities such as mineral severance sales, wages, corporations, and of course, bingo.

Through enactment of these laws, we have been able to fund certain essential governmental services such as judicial systems, police and fire protection, health and human services, water, sanitation, maintenance, and road improvements.

The Sac and Fox Tribe has shared that prosperity with the other Goverments around it, and we have done this by providing the sorely needed funds for these other Governments. It must be recognized that the Sac and Fox Tribe has reasonably acted as a sovereign tribal Government to provide for the health and welfare of all our common constituents no matter what race they are.

The Sac and Fox Tribe of Oklahoma recognizes the need for regulation of gaming activities. In recognition of this need, the tribe enacted a bingo ordinance on March 19, 1982. This ordinance provided for the licensing of all bingo games within our tribal jurisdiciton, which encompasses three counties.

It establishes requirements to obtain a license; it defines reporting and procedural requirements; and importantly, it provides penalties for noncompliance.

Therefore, we do not object to the spirit of Senate bill 902 as a regulatory position on Indian gaming. But we do have some objection to the methodology and the provisions contained therein, and some of our specific objections are as follows:

That the constitution and by-laws of the Sac and Fox Tribe of Indians of Oklahoma, for example, has no provision requiring secretarial approval of ordinances. And we find that perhaps a question of due process may enter in this area because of the provision in H.R. 1920 of the chairman of the commission being able to singlehandedly shut down operation for, as we perceive, almost no pretext at all. So we would ask that that be given due consideration.

We also ask that there should be some definition inserted into the bill perhaps language for the purposes of funding essential governmental functions. I relate that back to my statement as I began.

Through the Sac and Fox bingo ordinance, we regulate bingo operations much more stringently than the provisions of the bill would require and also any provisions that the State may dream up. For example, rather than requiring a financial statement, the ordinance section 320 requires the furnishing of a $100,000 cash or surety bond, and also there is a provision for a bond that insures that the lease is paid.

It also requires submission of information on all the operation's staff, not just those with financial interest. This ordinance gives us the capability of identifying those people who wish to do business in our area, that we may look at their financial statements and we may investigate them to the fullest extent possible, with the cooperation of any Federal or State agency. We have done so.

We also object to the funding of an Indian gaming commission, as provided by the bill, as provided for it by H.R. 1920, and also as provided by the so-called administration's bill on Indian gaming. This is through assessments of each tribe that maintains gaming activities. We contend that if the Government regulates through the Federal Communications Commission, they regulate the public airways, the Federal Trade Commission regulates trade, and all these are federally funded, we feel that a gaming should so be funded.

We see an inherent conflict in the funding of a commission by those organizations or activities it even purports to regulate. We feel it would be more effective both financially and operationally to establish a national Indian gaming commission, and we would recommend that the commission composition be, in essence, one tribal representative from each Bureau of Indian Affairs area, a Presidential appointee, one appointee from each House of Congress, one Justice Department appointee, one Bureau of Indian Affairs appointee, and perhaps one member-at-large selected by the members of the commission. We feel that this is fair and equitable and would provide input from all segments of the Government into the conduct of gaming nationwide.

We recommend that the commission be given the following authorities and responsibilities: No. 1, to develop and implement national standards for Indian gaming; monitor compliance with these standards; investigate Indian gaming activities as necessary; conduct hearing on the local and national levels; report findings to Congress, the President, and tribes; provide training and technical assistance; and authorize regional or State subcommissions; and authorize regional or State standards; and hire such staff as necessary for the fulfillment of these responsibilities.

We estimate that that initial cost would be $1.5 million.

Last but not least, we urge that the bill include language specifying that the court of proper jurisdiction in Indian cases is the tribal court. The inclusion of such language is consistent with another recent Supreme Court decision in the case of *National Farmers Union Insurance Companies, et al.* v. *Crow Tribe of Indians, et al.*, in which the Court's ruling upheld the tribe's authority in the first instance to decide issues arising in Indian country. Again, we cite due process as the tribal court should address the first instance of Indian disputes.

In summary, on our recommendations—let me back up, sir. As part of our testimony we have included an analysis of percentages proposed by current legislation, and these are based on gross receipts of private bingo operations licensed by the Sac and Fox Tribe of Indians of Oklahoma, and we are providing these numbers to this committee, and we will provide these to the Bureau of Indian Affairs if they will write us a proposal.

Mr. **Taylor**. Is that a part of your testimony?

Mr. **Franklin**. Yes, sir; I would like to briefly go over the numbers with you. We have for the year 1983, 1984, and 1985, if you take the 3 percent of the gross receipts, the total sums of 3 percent would account to $122,462.19. At 5 percent that would be $204,172.03. In comparison, Mr. Chairman, our bingo ordinance requires 45 percent net income, and as it now stands, over that three-period that tax comes to $150,187.80, which is much less than the 5 percent and is more comparable to the 3 percent. But if you take those figures and put them together, our tax and the tax that would be imposed by the proposed legislation, that business operation is out of business. There is no profit to be gained by anyone.

We ask that you please look at these numbers very carefully, and we will be more than willing to provide you with any other numbers, as these numbers are a matter of public record as established by tribal law.

[Prepared statement of Mr. Franklin appears in the appendix.]

Mr. **Taylor**. How many games are there at Sac and Fox?

Mr. **Franklin**. Sir, there is one operation now currently being conducted. It is licensed, and there has been a license applied for for another operation.

Mr. **Taylor**. This is an individually owned operation?

Mr. **Franklin**. Yes, sir; it is a corporation.

Mr. **Taylor**. So the tribe derives its revenues through the imposition of a tribal tax?

Mr. **Franklin**. Yes, sir; 45 percent of the net revenue after deductibles allowed for business expenses such as overhead and maintenance, et cetera.

Mr. **Taylor**. Let me go back to Otoe-Missouria. Is that a tribally owned operation?

Mr. **Franklin**. Yes; we own the facility, yes.

Mr. **Taylor**. You have a management contract?

Mr. **Franklin**. Right.

In summary, Mr. Chairman, I would like to say that the Sac and Fox Tribe, acting as a government, has enacted stringent laws that govern certain activities within its own jurisdiction. These laws are successfully generating revenues for our tribal government and have now been successfully challenged. The Sac and Fox laws are regulatory, just as the laws of any city, State, or municipality, and should be given full faith and credit as such. We only ask that the Sac and Fox Tribe be allowed to continue to act as a government and not be subjected to legislation that contains overtones of socialism and political maneuvering.

If the Federal Government assumes the necessity to regulate Indian gaming, then it should also bear a proportionate share of that burden. Imposing an undue gaming tax on Indian tribes is ludicrous and would be an abomination to the Founding Fathers of this great Nation. We only ask respect for our government as a viable, successful entity that is concerned about our common constituents and our continued good progress.

Mr. **Taylor**. Let me just make a similar inquiry about the games at the Creek Nation. Are those tribally owned or individually?

Mr. **Beaver**. The Creek Nation bingo is tribally owned.

Mr. **Taylor**. Tribally. And does the tribe manage it itself?

Mr. **Beaver**. No; we have a contract for management.

Mr. **Taylor**. You have management.

Mr. **Fixico**. Sir, we would like to stipulate, though, that we do have the gaming commission on the premises at all times that the operation is open, and even after hours and prior to opening as well.

I would like to make another statement about the United Indian Nations in Oklahoma in general. That is that the United Indian Nations in Oklahoma, the 18 gaming operations, we function in an atmosphere whereas the State is antagonistic toward our efforts to become self-sufficient. We take it as an affront that the State of Oklahoma has not recognized the government-to-government relationship between the Federal Government and the Indian tribes, bands, and nations, and that they have caused us to go to court at a very, very high expense.

In the entire scheme, when we talk about percentage moneys being deducted from the net revenues acquired by the tribes through hard, diligent work, then we have to take into account this antagonistic atmosphere and these moneys that are being spent in the courtroom rather than on behalf of our Indian people.

Furthermore, any type of deduction for Federal purposes as necessary as Federal intervention seems to be at this point because of these extenuating circumstances where the Indian tribes in Oklahoma are not treated in any respectful manner by the Oklahoma State Tax Commission and the silent State government, we believe that this is grossly unfair and should be taken into consideration.

However, in spite of these, I would like to go on the record as saying that tribal operations in Oklahoma have seemed to make charitable acts in spite of any type of antagonistic actions toward them. Specifically, the Muscogee Creek Nation was the second largest contributor to the Jerry Lewis Telethon for Muclular Dystrophy. The contributions came from the tribal revenues of the Muscogee Creek Nation. And the other tribal operations are still of a charitable mind.

We are amicable peoples. We are not something that should be feared. However, we are men and women of the Indian race, and we expect to conduct ourselves as such. We are becoming businessmen, and as such we take affront against anyone who would try to deduct from our net revenues. This is a business posture, and we are strongly in support of that with each brother tribe.

Mr. **Franklin**. Mr. Chairman, the Sac and Fox Tribe would like permission to enter for the record our comments on the new proposed administration's bill. I believe it's S. 2557.

Mr. **Taylor**. Yes; the record will remain open for at least 2 weeks.

Mr. **Franklin**. Thank you.

Mr. **Taylor**. We come now to the tail end of the witness list, and I always feel like apologizing to whoever I had to put last. But we have to organize ourselves somehow or other.

Mr. MacKenzie Turnipseed and Frank Wright of the Puyallup Tribe, accompanied by Joe Bowen.

Gentlemen, if you would just identify yourself for the record.

STATEMENT OF FRANK WRIGHT, CHAIRMAN, PUYALLUP TRIBE OF INDIANS, ACCOMPANIED BY MACKENZIE TURNIPSEED, TRIBAL MEMBER; AND JOE BOWEN, COUNSEL

Mr. **Wright**. Mr. Chairman and members of the committee, I am Frank Wright, Jr., chairman of the Puyallup Tribe, and on my right is MacKenzie Turnipseed, tribal member and manager of one of our licensed bingo halls on our reservation, and on my left is Joseph Bowen, counsel to the former national task force on gaming.

I would like to thank you for this opportunity to testify on the bingo bill H.R. 1920 and S. 902. I would like to submit a copy of my written testimony for the record. Attached to it is a memorandum explaining in detail the background of the Puyallup bingo.

Mr. TAYLOR. It will be made a part of the record at this point, Mr. Wright.

Mr. WRIGHT. Indian bingo issues matter to the Puyallups because the tribe has licensed three individual members to operate bingo halls on the reservation. The three halls are regulated and taxed by the tribe and produce by far the greatest resource of revenue that the tribe has today, hundreds of thousands of dollars a year. It is hard to imagine how the tribal operations could continue without that income, and because the halls are 100-percent Puyallup-owned, no outside ownership or management whatsoever, all the bingo money stays within the tribe.

As a general matter, we recognize, that it is our ability of applying certain Federal standards to Indian bingo games throughout the country, but our Puyallup bingo operations would be wiped out by the S. 902 and by H.R. 1920. These bills would only authorize Indian bingo games owned entirely by the tribe itself, even though the tribe might use outside, non-Indian managers who may be paid up to 40 percent of the net profit.

The system established in the bills is very different from the Puyallup approach to government. Our tribe has always had a tradition of encouraging individual economic enterprise. The philosophy of our tribe is to exercise its sovereignty through regulation and taxation of individual economic activities. This approach may make us different from many other tribes, but it has worked well for us and reflects our cultural values. It should not be dismantled.

Our tribe was the very first in the country to enact its own comprehensive gaming ordinance. The tribal council passed it in the fall of 1980, after individual members had become interested in the possibility of organizing bingo operations. The ordinance was drafted with the advice and assistance of the Department of the Interior. The Interior approved the ordinance, and it was ultimately enacted.

This ordinance reflects our policy choice and indeed our political philosophy that the tribal government should govern, regulate, and tax, while business should be carried on by private parties. We tax the gaming revenue at a rate of 17.5 of the gross revenues after payouts, a fairly hefty rate. The tribal government can increase this tax rate if it should decide to, and it has, in fact, done so previously.

The games annually generate for the tribal government between $500,000 and $600,000 in taxes and other fees. The tribal administration now depends on these taxes for its functions. The bingo money is also frequently used to supplement ever-shrinking Federal program funds.

Please also recognize that the individual operators have invested significant sums in reliance on this scheme, which after all was approved by the Department of the Interior. The Puyallup choice is our approach, in part, because the tribe did not wish to yield control of an important tribal enterprise to an outside nontribal, indeed non-Indian management company. After all, why should such an organization have a long-term commitment to the tribe and its goals?

We think it is no accident that our tribally owned and managed operations are considered wholesome games in the community. It is also important to us that all of the bingo revenues go to Puyallup tribal members who support extended families. In our view, this is preferable to having those profits absorbed by an outside management company. Further, the three halls together employ about 115 people. More than half of these are Indians.

The Puyallup Tribe has chosen an economic system based on individual enterprise, subject to regulation and taxation by the tribe. This philosophy, after all, is similar to that of the Federal Government, certainly of the current administration. We ask that our system receive similar respect.

Therefore, although we generally support H.R. 1920, we object to those provisions that would remove our right to license and tax individually owned games. If you do not wish to redraft the bill so as to provide generally for individually owned games, we ask that you include a provision to protect existing games owned by tribal members and regulated by the tribe under an ordinance approved by the Department of the Interior.

Thank you for your time and consideration, Mr. Chairman.

[Prepared statement of Mr. Wright appears in the appendix.]

Mr. TAYLOR. Mr. Turnipseed?

Mr. TURNIPSEED. Yes; I am MacKenzie Turnipseed, Puyallup tribal member. I have been involved in bingo from the beginning in Washington State. We were the first hall in the State of Washington. We have complied with the codes of the Department of the Interior.

The point we would like to make is that our system works for us. The tribe has been involved in different enterprises where they ran them, and some of them didn't work. Our system does work for us. That is one of the main things I would like to bring out.

This morning, about the pull tabs, the question about that, pull tabs are so important to the bingo operations. They provide about 25 percent, sometimes as much as 40 percent of our profit. If you have a game where you give out a lot of money, you're counting on the money you make from pull tabs to get you through the day. So with the administration's bill, they take the pull tabs away from the bingo operators and it could wipe them out. I would personally like to say that that would be a bad move for bingo.

Mr. TAYLOR. The administration made a point somewhere in the record that pull tabs are dispensed in a different fashion than the way that bingo halls operate. In other words, they could be sold out of a convenience store or anything else. How do you deal with those at Puyallup, particularly when you have three different games there on the same reservation?

Mr. TURNIPSEED. At each operation there is what we call a pull tab station. A person will come up. They have them in a big drum, a whole series.

Mr. TAYLOR. At the bingo hall or——

Mr. TURNIPSEED. Yes; at the hall. That's the only place that we have to distribute them would be at the bingo hall.

Then they tell the operator how much they want, you know, if they want $5, $10, $20, whatever. Then they play the pull tabs while they're playing bingo and at intermission. It's a major source of revenue. The two go together.

Even in the private bingo, you know, if they didn't have pull tabs, a lot of them would not make their overhead.

Mr. **Taylor**. Well, what seems to be the position of the administration is that pull tabs or punchboards really are not a bingo-related kind of a game.

Mr. **Turnipseed**. I don't think that's true. A lot of your bingo suppliers are the ones that supply pull tabs. The tribe presently gets all their supplies from a company called Jackpot. I think it's in Minnesota or North Dakota. They sell all sorts of bingo supplies. Almost every bingo hall that you go to, you will find pull tabs.

Mr. **Taylor**. How about other bingo operations in the State of Washington?

Mr. **Turnipseed**. They all have pull tabs.

Mr. **Taylor**. They have pull tabs also?

Mr. **Turnipseed**. Yes.

Mr. **Taylor**. Not just at Indian places, but non-Indian, too?

Mr. **Turnipseed**. Non-Indian places also. Plus you will find pull tabs in restaurants and cocktail lounges.

On the Puyallup Reservation the only place that we do have to distribute them is at the bingo hall.

[Prepared statement of Mr. Turnipseed appears in the appendix.]

Mr. **Wright**. Mr. Chairman.

Mr. **Taylor**. Mr. Wright?

Mr. **Wright**. I think it's important to recognize that the pull tabs are received by the tribe in the tribe, in turn, puts a seal on all the pull tabs before they're distributed out to the individual bingo halls. So they're regulated through that fashion.

Mr. **Taylor**. I appreciate that information.

Mr. Bowen, do you have some comments?

Mr. **Bowen**. The only comment that I had—is Mack still speaking? I think Mack still has more testimony.

Mr. **Turnipseed**. Well, I have a statement to read, but I am not going to read it. You have heard so much of it today, and it's repetitive.

Mr. **Taylor**. It will be made a part of the record.

Mr. **Turnipseed**. Yes; so I would like to be able to answer any questions that you might have, as a bingo operator, that might help you. The only thing I would say is that our system does work. We have—it's a mom-and-pop type operation. There are three different families that are involved in this. They have a lot of their relatives that work for them and for us.

In Fife, where we're located, the three of us, we probably employ about 150 people altogether, and over half of those are Indians. We're Fife's largest employer. We do a really good job. We're really competitive.

It's a mom-and-pop operation, and that's why we're here to ask for you to grandfather our operation because every place else has gone to tribally owned and managed contracts, and we see a lot of people doing their best to get away from the management contracts once they're involved in them. Management people have approached our tribe, and for whatever reason, they have turned them down.

If we were to cease our operation right now, we would have to invest probably $4 million to $5 million to build one operation, one tribally owned operation, that would be equal to the three of us. Then we would have to start paying the interest on that. The tribe would lose more income than what it would be gaining by becoming a tribally owned operation. That's the major point.

Mr. TAYLOR. Well, we have heard from at least one other tribe that has an individually owned operation, Sac and Fox from Oklahoma, which just testified.

Mr. TURNIPSEED. Right.

Mr. TAYLOR. We did get quite a bit of testimony on the Puyallup operation in our hearing a year ago.

Mr. TURNIPSEED. Right.

Mr. BOWEN. Well, Mr. Chairman, I was just going to say that I think the points were made real well. I don't really have much else to add except that I was kind of disappointed with the way S. 2557 came about, rather secretively and quickly.

I remember for a long time on the task force we worked real closely with the Criminal Division of Justice, Mark Richards. We had a very good working relationship, and I felt that H.R. 1920 and also S. 902 reflected the desires of the Justice Department and some of the things that they wanted included in the bills.

We worked really hard to include those, and I know a lot of tribes weren't real happy about it. So then for them, because of a new personality involved, to come out with this new bill, I was real disappointed with the way it happened.

Mr. TAYLOR. How long ago did the cooperative effort with Justice sort of cease?

Mr. BOWEN. When Mark left, which was, what, about—he was put in charge of that program overseas, and that was about, I don't know, about 9 or 10 months ago, something like that.

But that 2-year period before that, we had a very cooperative relationship.

Mr. TAYLOR. Well, what was his name and title?

Mr. BOWEN. Mark Richards. He is one of the assistant deputy attorneys general.

So I guess I am kind of disappointed in that. I am disappointed in the way the administration got involved without any kind of opportunity for input from the tribes. I just wanted to make that point.

The second point was, pull tabs, all the hearings that we held all over the country and the different suppliers we've interviewed, in our association, as you know, with NAGRA [National Association of Gambling Regulatory Agents], pull tabs do go hand-in-hand with bingo, and they are an important part of the income.

The third thing is, on the percentages, one of the things the tribes—some of them—are concerned about that we have found, there are a lot of tribes that have management companies. Their concern was that they do—the tribes should have, of course, the controlling ownership interest—but that as between the two bills, I think one was 49 percent and one was 40 percent, the ceiling allowed. The recommendation that was made—and I think it was good—was that the 49 percent be allowed as the maximum ceiling because sometimes getting investment folks into a smaller hall, it doesn't have the income where, you know, like 40 percent would be reasonable. It gives them that much more margin.

Those are all the comments I had.

Mr. **Wright**. Mr. Chairman, one other thing. I don't know that we have indicated how the taxes are collected and whatnot, you know, on the reservation with the three halls that we have operating. I think it's important to understand that these taxes are collected on a monthly basis and that the board maintains the right to come in and audit at any time. So I think it's important. I don't know how all of them are paid. Some of them may be quarterly or annually or semiannually. But I think it's important to know that we're well aware as to what's happening within the operations by monitoring it on a monthly basis, and we on occasion do send people in to monitor the games to make sure that they're well controlled.

Mr. **Taylor**. Who do you send in when you send in a person to make an audit?

Mr. **Wright**. An accountant, key person, whatnot.

Mr. **Taylor**. A person who is a member of the tribe or an outside owner?

Mr. **Wright**. Normally an outside.

Mr. **Bowen**. I was just going to make one more last comment. That was, with the Supreme Court accepting suit, I would recommend that we could proceed with all deliberate speed on the bill, too. [Laughter.]

Mr. **Taylor**. Well, I don't have any further questions. The record will remain open another 2 weeks, and if you want to amplify on the record, why, feel free to do so.

Mr. **Wright**. Thank you, Mr. Chairman.

Mr. **Turnipseed**. Thank you.

Mr. **Bowen**. Thank you.

Mr. **Taylor**. That reaches the end of the witness list, so the hearing will be adjourned.

[Whereupon, at 3:35 p.m., the committee was adjourned.]

[The text of S. 2557 appears in the appendix.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

Prepared Statement of Senator Pete V. Domenici

Mr. Chairman, we are here to explore the question of the proper balance between Federal, Tribal, and State authority over gambling activities on Indian reservations.

There are now at least 108 gambling facilities on Indian land. They generate an estimated $100 million annually in gross receipts. One tribe near San Diego generates $1 million per month. It is important to note that these gambling activities are conducted by Indian tribes, but their primary participants are non-Indians. The legislation Congress passes as a result of these hearings will set the policy direction needed to guide the law enforcement community in the delicate balance between Indian sovereignty and a State's power to police its citizens.

Clarification of this policy is timely since the legal situation is very confusing at the present time. Many State and local law enforcement officers feel frustrated with the paradox of seeing gambling activities on Indian land that would be illegal anywhere else in the State. Some tribal officials are convinced that their reservations are, and should continue to be, free of State jurisdiction because they believe that Indian sovereignty precludes any State legal or regulatory action on the reservations.

In the absence of such clarification, profits are being made by non-Indian bingo operators who have contracts with the tribes. Non-Indians are going onto the reservations in droves to play high-stakes bingo that they could not play legally in other parts of the State. All of this is happening under the rationale that profits will eventually go to the needy Indian people. Since we are unable to obtain any accurate reporting of the revenues and profits, we cannot say, however, that the Indian people as a whole are benefiting from high-stakes bingo on the nation's reservations.

We do know that a few reservations are quite successful. In New Mexico, for example, Sandia Pueblo which is on the northern border of our largest city, Albuquerque, has reduced its unemployment rates to a new low of three percent by operating a high-stakes bingo game. Other pueblos, however, are having difficulty attracting crowds and meeting the overhead expenses charged by the operators. The first high-stakes bingo tribe in New Mexico, the Pueblo of Acoma, has seen its initial profits falter. While all the evidence is not available about the benefits of tribally sponsored gambling, I would predict that in the majority of cases, little of the bingo revenue can yet be seen on the reservations benefiting the Indian people as a whole.

There is no question that there is money to be made in high-stakes bingo and other forms of gambling. We are here today to help determine the best avenues to insure fair and honest games; to determine which kinds of gaming should be allowed on the Indian reservations; and to help insure the proper flow of profits for the benefit of tribal members. We must also determine the best Federal policy for continuing our Constitutionally mandated protection of Native American interests while respecting the position of State residents who have made their gambling policies clear through State laws that were enacted to apply to all State citizens.

This hearing will explore the many nuances in the triad of relationships among the Federal Government, the Indian Tribes, and State Governments. I would like to explain my view of our current situation in this triad of relationships. Our Constitution states that Congress has the power to "regulate commerce ... with the Indian Tribes." The courts have held this provision to mean that Congress has full plenary power over Indian affairs.

In determining whether States can regulate particular activities on Indian reservations, the courts have examined whether the Federal Government has preempted State regulation in the area. This preemption analysis is conducted before a "backdrop" of tribal sovereignty. Thus, the Supreme Court has held that "where a detailed Federal regulatory scheme exists and where its general thrust will be impaired by incompatible State action, that State action, without more, may be ruled pre-empted by Federal law."

In Rice v. Rehner, however, the Supreme Court held that a State may properly require a federally licensed Indian trader operating a general store on an Indian reservation to obtain a State liquor license. The decision was based on a Federal statute which authorizes State regulation of liquor sales on reservations, the long history of State regulation of liquor on Indian lands, a strong State interest in liquor regulation, and the fact that liquor regulation has not traditionally been within the realm of tribal self-government. Some of these same arguments can be made in favor of State regulation of Indian gambling.

The very existence of the Federal statute prohibiting gambling devices on reservations, 15 U.S.C. 1175, however, may serve to establish Federal preemption and thus prohibit State control. This is the argument used by the Commission on the Review of the National Policy Toward Gambling in 1976. They recommended, in fact, that Congress repeal 15 U.S.C. 1175. "In withdrawing Federal control," the Commission said, "Congress can cause jurisdiction over the reservations to be delegated to the States...."

Thus, we see that, where Congress has delegated authority to the States or where State regulation is not preempted under the Constitution, States may regulate activities on Indian reservations. The silence of the Congress on Indian gambling in general (except for a law prohibiting gambling devices on reservations), however, leaves the question of the legitimacy of State attempts to regulate gambling on Indian lands for the courts to decide. Yet, we have no absolute guidance for the applicability of State gambling laws on reservations as there are no Supreme Court decisions on point.

Without a clear statement of Federal intent, the Supreme Court will have to examine the particular circumstances before it and attempt to find the proper balance of tribal, Federal, and State interests. Until Congress sets the national policy, the courts will have to rely on their own interpretations of how to resolve this balance in each particular case.

In the absence of such a specific Federal delegation, State regulation of activities on Indian reservations is susceptible to a legal challenge on the basis of tribal sovereignty and Federal preemption. Unfortunately, there is no clear-cut standard for determining whether a particular measure will survive such a challenge. One must weigh the varying interests of the tribes, the Federal Government, and the States. In the past, courts have looked at the degree of existing Federal regulation in the area, the off-reservation effects of on-reservation activity, whether there is a traditional interest in Indian self-government, whether the burden of State regulation falls primarily on Indians or non-Indians, and whether the State provides any benefits in exchange for its regulation.

Of great interest will be the Supreme Court determination in a case that is expected to be heard this fall. Cabazon and Morongo Bands of Indians v. County of Riverside could set a major new precedent in the matter of State control over Indian gambling. Until recently, gambling was subject to State penal statutes. The Cabazon case, decided by the Ninth Circuit, declares State charitable bingo laws in California unenforceable on Indian reservations.

If the Supreme Court decides in favor of the States in Cabazon, the tribes could lose all rights to high-stakes bingo and an important new source of tribal revenue. The reverse decision would encourage even broader avoidance of State law and reservations could become enclaves of uncontrolled gambling. In any event, we could be faced with a series of court decisions striving to determine what Congress could best determine -- the proper balance between the triad of governments involved.

Another way for States to assert their control over Indian reservations is through the Assimilative Crimes Act. The Act allows State criminal law to have the force of Federal law on an Indian reservation. In 1948, Congress filled a void in criminal law on the reservations by assimilating State criminal law where the Federal law was silent. This allows Federal prosecution for crimes on reservations when those crimes are defined by State law. By assimilation, then, Federal prosecution is possible through the extension of Federal policy by way of a State's criminal code.

Recent Federal court decisions have drawn a distinction between assimilation in civil and criminal statutues. This distinction stems from the recognition of the right of Indian tribes to establish their own laws in those matters that are basically non-criminal in nature. The distinction between criminal and civil law blurs, however, in the area of gambling, where both kinds of laws may be applicable depending on the type of gambling in question. For instance, the courts have held, in essence, that bingo regulation is not criminal law and, therefore, not assimilated by the Federal law. This gives the tribes their growing interest and dominance in high-stakes bingo. States have no authority, according to recent lower court decisions, to impose their regulatory civil law on the reservation. According to this line of cases, where there is no State criminal prohibition of bingo, the tribes are free to determine their own bingo regulations, including the size of the prizes, days of operations, and other vital features of State civil control over non-Indian bingo. The same may not be true, however, of other types of gambling.

It is clear, Mr. Chairman, that the legitimacy of State regulation of gambling on Indian reservations is unsettled in the law. It is my hope that these hearings will help to establish some form of concurrent or joint powers agreement that will protect tribal sovereignty while respecting State interests. The best solution, it seems to me, is a carefully crafted statement of national policy governing all forms of gambling on Indian reservations. It is our responsibility to clarify the law and to set national Indian policy. While I personally believe that there are better ways to develop the human and economic potential of Indians than gambling enterprises, I would not favor restricting the potential for Indian income as now promised by high-stakes bingo. I do believe, however, that other forms of gambling should be much more strictly tied to State law and regulation so that we do not see the proliferation of lotteries, card games, casino games, electronic variations of bingo that border on these games, or pari-mutuel betting.

In conclusion, Mr. Chairman, I thank this Committee for its efforts to establish a clear legal and public policy record before we write any new statute regulating gambling on Indian reservations. I hasten to add, as I have stated earlier, that Congressional intent must be established by statute in order to give the courts better guidance in this critical law enforcement arena.

I look forward to working with this Committee on Indian Affairs to help shape the necessary legal framework for establishing a national Indian gaming policy that fully respects the legal constraints of State law while offering Indian people a valid opportunity to become profitable players within that same policy framework. I will be available to this Committee and my friend the Chairman for this purpose.

I thank the Chairman and members of the Senate Select Committee on Indian Affairs.

PREPARED STATEMENT OF SENATOR JEFF BINGAMAN

Mr. Chairman. I am pleased to appear before this committee to share some of my views on Indian Gaming.

I support the need for Federal legislation in this area, and I am hopeful that after today's discussion of the issue we will better understand the best form such legislation should take. I believe we are on the right track in analyzing this matter through the legislative process. Too often we have thrown up our hands when it has come to complex Indian matters and have left it to the courts to either figure out what we failed to do or to determine our intent. I am well aware that the Supreme Court has agreed to hear the 9th Circuit case, Cabazon Band of Mission Indians v. County of Riverside, but that should not deflect our action on the issue today.

To carry out your task you must weigh all the legitimate concerns of the Indian tribes, the states, the gaming competitors, the Federal Government, and the general public. Certainly Indian Gaming would not be as attractive an economic enterprise were it not for the depressed economic conditions on Indian reservations. I do not question the reasons why tribes are looking to gaming as a revenue-producing activity. Such funds have been used to the benefit of tribal members -- to improve social services, law enforcement, health, education and other governmental interests of the tribe.

Several legislative solutions have been suggested thus far as part of this debate. S. 902, introduced by my colleague, Mr. DeConcini, is one such bill. The House has also recently passed another legislative solution, H.R. 1920. In addition, the Administration has offered its approach, S. 2557, which was introduced by Senator Laxalt. Each of these bills has certain similarities, but also important differences.

As a former Attorney General of New Mexico I am acutely aware of the concerns of State officials about Indian Gaming, as well as the interests of tribal governments in the economic benefit derived from gambling. New Mexico has four tribes currently operating bingo games with a fifth ready to begin operation. I am not aware of any law enforcement problems created by these games, and I do not oppose them. However, it is important to note that more extensive tribal gambling is under discussion. Pari-mutual dog racing, which is criminal under New Mexico law, was recently disapproved by the Secretary of Interior. The authority for that disapproval is presently under litigation. There is also considerable public opposition to such expanded gambling activities on the reservations.

Of the three bills mentioned I think the administration bill strikes the best compromise in balancing these interests. That bill legalizes bingo on Indian reservations, but links all other forms of gambling in which non-Indians are involved to the exact games allowed by the States under the same regulations as are imposed by the states. Neither of the other bills, S. 902 or H.R. 1920, satisfactorily resolves this central issue.

The issue of allowing State law to determine what is permissable Indian gaming other than bingo is my fundamental concern. I feel this is not an Indian sovereignty issue, but a matter of protecting the citizens of a state by regulating the activities that are conducted within a state. It is obvious that the current and expanded gambling activities are aimed at attracting non-Indians to the reservation. As such, it is not a matter of state interference in strictly internal tribal matters, but a matter of a state protecting its citizens.

The administration bill supports this premise and leaves primary enforcement authority in the State for gaming other than bingo, but provides for federal criminal jurisdiction in certain instances. This is a realistic and appropriate way to deal with this issue.

I hope my comments are helpful to the Committee in resolving this issue. I look forward to assisting the Committee in whatever way I can in reaching an agreement on this important issue.

Thank you, Mr. Chairman and members of the Committee.

PREPARED STATEMENT OF
VICTORIA TOENSING
DEPUTY ASSISTANT ATTORNEY GENERAL
CRIMINAL DIVISION

Mr. Chairman and Members of the Committee, I am pleased to be here today to present the views of the Department of Justice on three bills, H.R. 1920, S. 902, and S. XXXX, all of which pertain to gambling in Indian country. S. XXXX was drafted by the Departments of Justice and Interior and we strongly support its enactment. We do not believe that the other two bills regulate high stakes gambling on Indian reservations adequately and, consequently, we oppose them.

Introduction

By way of background, it is necessary to examine the complicated allocation of jurisdiction in Indian country among the tribes, the states and the federal government. With respect to the allocation of jurisdiction, there are two major types of reservations. The first type is where jurisdiction over Indian residents is shared between the federal government and the tribes, and state laws do not generally apply where Indians are concerned. The second type is where Congress by statutes (such as the well-known Public Law 280) enacted generally in the 1940's and 1950's, has allowed some states to exercise criminal and some civil jurisdiction over Indians. Even on non-Public Law 280 reservations, however, some types of state laws have been held applicable to conduct by Indians through the Assimilative Crimes Act (18 U.S.C. 13) and 18 U.S.C. 1152.

Nevertheless, courts have held that only state criminal laws are assimilated and applied to Indians, not state regulatory laws, even when the regulatory laws are enforceable by criminal penalties. Other decisions have held that even in states where the Congress, by Public Law 280 and similar laws, has applied state laws to Indians in Indian country, only state *criminal* laws may be so applied. State *regulatory* laws have been held not to apply to Indians.

The judicial distinction between state criminal and regulatory laws has been applied in situations involving bingo on Indian reservations and is the reason for the three bills before the Committee today. Courts have held that certain state laws -- involving such matters as hours of play, restrictions on prizes, and the type of organizations that may operate and profit from bingo -- are regulatory and hence do not apply in Indian country. 1/ Since there are no federal laws regulating bingo, the only regulation is that provided by the tribes themselves.

Not surprisingly, a number of Indian tribes have acted to take advantage of the immunity from regulation and restrictions created by these decisions. They have set up and are operating high stakes bingo operations. In many instances, these operations have generated badly needed tribal revenues and provided employment for tribal members. But earning revenue from high stakes gambling comes with a risk. Gambling involves large sums

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1/ See, e.g., *Barona Group of Mission Indians* v. *Duffy*, 694 F. 2d 1185 (9th Cir. 1982); *Seminole Tribe of Florida* v. *Butterworth*, 658 F. 2d 310 (5th Cir. 1981); *Cabazon Band of Mission Indians* v. *County of Riverside*, et al., and *Morongo Band of Mission Indians* v. *County of Riverside*, et al., 783 F. 2d 900 (9th Cir. 1986), probable jurisdiction noted ___ U.S. ___, 54 Law Week 3809, (June 9, 1986).

of cash and lucrative peripheral service industries that, in our experience, are extremely likely to draw the attention of organized crime figures and other criminal elements. It is for this very reason that legal gambling is highly regulated by the states that allow it. States that permit pari-mutuel wagering, as many of them do, have racing commissions to police the horse and dog racing industries. States that run lotteries have lottery commissions to regulate that activity. And the states of Nevada and New Jersey, the only two that allow casino gambling, the type of gambling most analagous to high stakes bingo, go to great lengths to regulate the casino industry. In spite of these efforts, criminals still sometimes infiltrate casinos. Just earlier this year, five persons widely believed to be top-echelon mob figures were convicted of skimming over two million dollars from Las Vegas casinos.

Therefore, we in the Administration have concluded that if high stakes bingo is to continue in Indian country it must be regulated. This is hardly a surprising position. All three of the bills before the Committee are drafted with the intent of regulating gambling in Indian country, and the two most detailed, S. XXXX and H.R. 1920, provide for the establishment of a Commission for this purpose. [2/] The real question is which one regulates gaming most effectively.

[2/] S. 902 in effect gives the tribe a choice of having their gaming operation regulated by the Secretary of the Interior or by regional gaming commissions. Since S. 902 was intended by its sponsor merely to serve as a discussion draft so that all interested parties may have the opportunity to share with Congress the concerns they have about the development of gaming enterprises on Indian reservations," see *Cong. Record*, 99th Cong., 1st Sess., April 4, 1985, p. S 4124, some of its provisions will be discussed less fully than comparable provisions in the other two bills.

Before describing the three bills, Mr. Chairman, let me emphasize that while we have already seen some instances of "skimming" by management contractors -- which robs the tribe of its revenue -- we have no evidence that Indian-operated gambling is any more susceptible to corruption than any other type, nor is it any less so. The fact is there are plenty of criminals in this country who would like nothing better than to gain access to the counting room of a casino or a bingo hall. It is the nature of the enterprise that requires close regulation and control to keep out criminal elements and to ensure that the tribes continue to profit from bingo.

Moreover, while traditionally many state laws are not applicable in Indian country, basic fairness and this Administration's firm commitment to the notion of federalism lead us to the conclusion that some deference must be paid to state policies regarding gambling, consistent with the principles of tribal sovereignty. As I will explain, S. XXXX, more than the other bills, makes some allowance for state policies without losing sight of the fact that "tribal sovereignty is dependent on, and subordinate to, only the Federal Government, not the States." 3/

3/ Washington v. Confederated Tribes of the Colville Indian Reservation, 447 U.S. 134, 154, (1980).

What we have attempted to do is carry on present day notions of tribal sovereignty that have developed out of historical traditions of tribal independence to reach an "accommodation between the interests of the Tribes and the Federal Government on the one hand, and those of the State[s], on the other." 4/

With that background, Mr. Chairman, I would now like to address the three bills before the Committee.

Types of Gaming Allowed

S. XXXX

S. XXXX allows organized Indian tribes recognized by the Department of the Interior to apply for a federal license to run a bingo operation. The conduct of the bingo operation would be supervised by a federal Commission and subject to federal statutes and regulations.

S. XXXX provides that all other forms of gaming on Indian reservations (except purely social or ceremonial gambling which is left to regulation by the tribe) is to be subject to state regulation and licensing. This means, for example, that a tribe

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4/ Id. p. 156

wishing to conduct horse or dog racing with pari-mutuel wagering, or casino gambling must obtain a state license and comply with all state requirements. Section 401 of S. XXXX explicitly gives the states the power to enforce in state courts their laws regarding gambling other than federally licensed bingo and social or ceremonial gambling.

The key term "bingo" is defined narrowly in S. XXXX as the traditional game played by a gathering of persons who cover numbers on a card as the numbers are drawn by chance. It would not include pull tabs, punch boards, "instant bingo" or other games that are really a form of numbers game or lottery. It would also not include electronic video bingo, which involves a device similar to a slot machine.

Finally, S. XXXX would not allow tribes in states where no type of bingo is allowed under state law to operate bingo. At the present time there are five such states. They are Utah, Hawaii, Indiana, Mississippi, and Arkansas. No tribe in any of these five states is now operating bingo and none would be allowed to do so under the permissive federal court decisions I mentioned earlier.

H.R. 1920

H.R. 1920 would allow Indian tribes themselves to engage in or license bingo -- referred to as "Class II gaming" throughout the bill -- provided a tribal ordinance or resolution to that effect is approved by the Commission established by that bill. H.R. 1920 contains a limitation, in subsection 11(a)(2)(B)(ii), providing that tribes in states where Class II gaming activity "is prohibited by the State within which such tribe is located as a matter of public policy and criminal law," may not engage in or license bingo. This would appear to prevent tribally operated or authorized bingo in the five states mentioned in connection with a similar provision in S. XXXX.

However, H.R. 1920 defines bingo much more broadly than does S. XXXX. It would specifically include pull tabs and punch boards. This would authorize instant lotteries outside of state control, and authorize them even if such lotteries were contrary to state policy.

Unlike S. XXXX, H.R. 1920 does not subject tribally licensed or operated commercial gambling other than bingo to full state regulation. Rather, it permits such tribally licensed or operated commercial gambling -- which it refers to as Class III gaming -- but provides, in sections three and 21, for a four year moratorium on starting new Class III gaming operations during which time the Comptroller General will conduct a study of the Class III gaming operations presently underway and recommend to Congress ways in which they should be regulated. During that four year period, Class III gaming in operation on January 1, 1986, would be subject to regulations drafted by the Commission. These regulations must be "substantially equivalent to those of the State within whose boundaries such gaming occurs." 5/ The

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5/ See Subsection 3(c)(3)(B) of H.R. 1920.

Commission would be required to prepare these regulations within 120 days, a seemingly formidable task inasmuch as the Commission might be required, for example, to enact and apply rules of several different state racing commissions to the various tribes.

In addition, with respect to the racing industry in particular, it would appear that a dual federal and state regulatory system would be completely impractical and would represent a substantial federal intrusion into an area of state concern. The states have developed ways to detect how racing animals can be drugged and how races can be fixed. They generally have personnel in place to guard against these practices. The federal government simply cannot match this effort. Moreover, one of the most important tasks of most state racing commissions is the assignment of racing dates. It is not clear from H.R. 1920 whether the National Indian Gaming Commission is to award racing dates in cooperation with the state commission. If, as appears likely, the Commission is not to do so, tribes operating racing can operate free of the most meaningful and important type of state control. 6/

6/ Most states permit only a limited number of racing dates for each of the main types of racing that typically involve pari-mutuel wagering -- thoroughbred racing, harness racing, quarter horse racing, and dog racing -- but racing states often contain more than one track providing a particular type of racing. Thus, assuming a state with three thoroughbred tracks allows 200 days of thoroughbred racing, how those days are divided among the three tracks is usually very important. It is often not economically feasible to operate more than one such track at a time and certain racing dates -- for example the middle of the summer in a summer vacation area -- are considerably more valuable than others. Thus a state racing commission's awarding of racing dates takes on great economic significance for a state's tracks.

S. 902

S. 902 would not restrict tribally run gaming to bingo. Section six of that bill would allow an Indian tribe to engage in any gaming activity not prohibited by federal law in Indian country or by the state as a matter of state policy. [7] It would thus allow Indian tribes to conduct pari-mutuel horse and dog racing, free from state control, in states where those activities are otherwise strictly regulated by the state; and it would allow Indian tribes to run casino games (other than slot machines or roulette) in Nevada and New Jersey.

We submit that as concerns the type of gambling allowed, S. XXXX is by far the superior bill. Not many tribes are yet running gambling operations other than bingo, so limiting gaming to bingo will have relatively little adverse economic impact. At the same time, limiting gaming to bingo will free the Commission to concentrate on regulating that business. By contrast,

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[7] One of the few federal gambling statutes applicable in Indian country is the Gambling Devices Act (15 U.S.C. 1171 et seq.). Under this Act "gambling devices" include, among other things, slot machines and roulette wheels. Under 15 U.S.C. 1175, it is illegal to possess, sell, or use a gambling device in Indian country as defined in 18 U.S.C. 1151. Violations of this provision are punishable as a felony by a fine and imprisonment for up to two years.

H.R. 1920 would require the Commission to dissipate its energies attempting to regulate areas of gaming such as racing in which the states have developed expertise. This is an area in which the federal government should have no role. We also strongly oppose the very loose definition of "bingo" in H.R. 1920. As I indicated, that bill would allow tribes, in a state that allows bingo only by charitable organizations and for very modest prizes and which has rejected legalizing lotteries or numbers games as a way of raising revenue, to run not only high high stakes bingo but also lotteries. I might add that regulating a lottery that permits persons to buy chances at different locations and at all hours presents a different type of regulatory and inspection problem than does a bingo game played by a gathering of persons in one location for a finite time period.

Commission Powers

Both H.R. 1920 and S. XXXX establish a Commission to exercise some degree of control over tribal gaming. However, the Commission established by S. XXXX has considerably more power than the one established by H.R. 1920. The greatest contrast in the two commissions can be seen in the fact that the Commission established by S. XXXX has the power to license tribal gaming operations and, if it chooses to do so by regulation, to license individual employees of bingo establishments. Such licensing authority is typically exercised by state gambling regulatory bodies, yet the Commission established by H.R. 1920 has no such power. [8]

S. XXXX provides that a tribe wishing to operate a bingo establishment must apply for a license to do so. The Commission will grant a license if it is satisfied that the tribe, and any management contractor with whom the tribe has contracted, are able to comply with all provisions of law and all Commission rules, and that the operation is likely to be conducted honestly and for the general economic benefit of the tribe. It is intended that the Commission exercise discretion in deciding whether or not to approve a bingo license by examining such things as possible ties of prospective managerial personnel to criminal organizations and proposed management salaries.

By contrast, H.R. 1920 makes no provision for the licensing of individuals and does not require a tribe to obtain a license to operate bingo. Rather, it requires only that a tribal ordinance authorizing such gaming must be submitted to the Chairman of the Commission who must approve the ordinance if it meets the minimum standards set out in the bill. We have no quarrel with standards set out at subsection 11(b)(2) of the bill relating to such things as ensuring that the tribe, as opposed to individual tribal members, shall have the sole proprietary interest in the operation, that revenues are to be used only for general tribal welfare and economic development, and that the tribe will obtain outside independent audits of the operation and furnish them to the Commission.

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[8] S. 902 provides that the tribes may, at their option, establish regional commissions. The bill is very sketchy as to such commissions' powers, providing only that they "shall assume and have all the same authority and responsibility that the Secretary has in the respective area to approve or disapprove all tribal gaming ordinances, resolutions, and management contracts, and otherwise regulate all Indian gaming activities..."

We think, however, that H.R. 1920 is seriously defective in not allowing the Commission to exercise real judgment and discretion over other factors that go into operating a high stakes gambling enterprise. In taking this position, we are not unmindful that some tribes are operating their bingo games profitably. But the success has not been universal. The operation of the Cabazon Band of Mission Indians in California, for example, is in the bankruptcy court. There are some tribal operations that have generated income only for outside management contractors. Disagreements over bingo operations have lead to bitter controversies within certain tribes such as the Cabazon Band and the Winnebago Tribe in Wisconsin. Moreover, criminal convictions have already been obtained in cases involving skimming of bingo profits and bribery of tribal officials related to bingo operations. 9/

9/ The California Attorney General's Office has informed us that Stuart Seigal, the manager of the gaming operation of the Barona Group of Mission Indians in that State, was indicted on six counts of grand larceny in connection with a $135,000 skimming operation. He pleaded guilty on four of the counts.

In Louisiana, Richard A. Tonry, who in 1977 served briefly in Congress before resigning and then being convicted of election law violations, was recently convicted of Interstate Travel in Aid of Racketeering (or ITAR) and conspiracy in connection with bribing the Chairman of the Chitimacha tribe to obtain the exclusive rights to run bingo games.

While we certainly hope these incidents are not typical, they graphically illustrate the fact that high stakes gambling needs to be carefully examined and rigorously policed to keep out undesirable elements. The most effective way to do this is to examine carefully a proposed tribal bingo operation before it

Commission Structure and Organization

The structure and organization of the Commissions established by S. XXXX and H.R. 1920 also differ markedly. The differences reflect the intention of S. XXXX to establish a strong Commission that has the power to police high stakes gaming, whereas H.R. 1920's Commission would be, in many respects, subservient to the tribes that are operating and profiting from that gaming.

S. XXXX provides for a three-person Commission. Two Commissioners would be appointed by the Secretary of the Interior, one of whom would be named Chair. The third Commissioner would be appointed by the Attorney General. The Commissioners would serve at the pleasure of the Cabinet Officer who appointed them. The job of Commissioner would be a full time position and a Commissioner would be forbidden to receive compensation from any other federal, state, tribal, or nongovernmental office. (The prohibition on receiving compensation from a tribal office is included because, although there is no requirement that any one or more of the Commissioners be an Indian, it is certainly likely that one or more may be at any given time.)

By contrast, H.R. 1920 provides for an eight-member Commission. Only the Chairman, who would be appointed by the Secretary of the Interior, would serve full time. The other seven would serve only part time and receive pay equivalent to that of a GS-18 for every day they are engaged in the performance of Commission duties. Of these seven members, one would be appointed by the Attorney General, and one by the Secretary of the Interior for the specific purpose of representing the interests of the States. The remaining five members would be appointed by the Secretary from a list of between ten and twenty candidates submitted by a majority of the tribes engaged in or regulating gaming. Thus, H.R. 1920 provides for a working majority of the Commission to be chosen from a pool of persons selected by the very organizations the Commission is supposed to regulate.

As disturbing as this is, H.R. 1920 also provides for the removal of any Commissioner including the Commissioner appointed by the Attorney General and the Commissioner appointed by the Secretary to represent state interests by a majority vote of the Commission for "good cause." What might constitute "good cause" is not specified. A requirement that the Attorney General or Secretary must approve an attempt to remove the Commissioner he or she appointed might prevent such a Commissioner from actually being thrown out of office; however, it is extremely unwise to have a Commissioner responsible to anyone other than the person who appointed him or her and particularly inappropriate to put a Commissioner in a position to be constantly concerned about not offending representatives of the very industry being regulated. This dangerous concept is carried further by a provision that the remaining members of the Commission may select a successor to fill a vacancy created by Commissioner's being voted out.

Further indication of the weak nature of the H.R. 1920 Commission can be seen in the limited powers given to the Chairman, the only member not subject to removal by a majority of the Commission. The Chairman would have the exclusive power only to approve tribal ordinances regulating bingo and to approve bingo management contracts -- to be sure, two of the most important Commission functions -- and to select and supervise most of the Commission staff. The Chairman would have power, subject to the approval of the rest of the Commission, to appoint a General Counsel, to issue temporary closure orders for violations of Commission regulations, and to levy and collect civil fines for such violations. All other powers of the Chairman would have to be delegated to him or her by the Commission. [10]

Commission Staffing

S. XXXX provides that the Secretary of the Interior shall provide personnel to the Commission. The personnel are to be appointed subject to the provisions of title 5, United States Code. Thus, at least most of the staff will be appointed in the competitive service and receive compensation at an appropriate GS rate.

In sharp contrast to these provisions, H.R. 1920 would allow the Chairman of the Commission to appoint all of the staff except the General Counsel -- whom the Chairman will also appoint but subject to the approval of the rest of the Commission -- without regard to the provisions of title 5, United States Code. Moreover, H.R. 1920 would allow the Chairman to set the pay of the Commission staff without regard to established GS rates, subject only to a provision that no staff member could receive compensation in excess of that payable for a GS-17.

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[10] The regional Commissions established in S. 902 would consist of seven voting and two nonvoting representatives. The seven voting representatives would be selected in accordance with a procedure agreed on by the tribes at the time they established the regional Commisions. One of the nonvoting members would be selected by the Secretary of the Interior and one by the Attorney General. The Commissions contemplated by S. 902 are, of course, even weaker than the Commission established by H.R. 1920.

In our view, H.R. 1920 thus creates an enormous potential for the appointment of unqualified persons at unjustified salaries. There would appear no reason why non-policy making staff employees of the Commission -- for example secretaries and accountants -- should not have to demonstrate the same degree of competency and receive the same level of compensation as persons doing the same jobs in other parts of the federal government. 11/

Commission Funding

As for the funding of the Commission, S. XXXX provides that all of the expenses of the Commission except the Commissioners' salaries and one time start-up costs are to be paid by assessments on the tribes operating bingo. 12/ Thus, cost of the Commission to the taxpayers will be minimal. Assessments are to

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11/ S. 902 makes no provision for Commission staffing. Apparently its regional Commissions would meet only sporadically -- the bill provides that they must meet at least quarterly -- and it may be that no full time staffs were envisioned by the drafters.

12/ The Commissioners' salaries would not be paid by the tribes to avoid any appearance of impropriety that might arise from their being paid by the organizations they are regulating. Moreover, it was felt to be simply unfair to make the tribes pay for the start-up costs of the Commission, generally the costs associated with its initial organization and drafting of an initial set of regulations.

be a percentage of gross bingo revenue or net income from bingo; they could be set on a sliding scale whereby more profitable operations would pay a slightly higher percentage than ones less profitable. In our view, a level assessment on all tribes could drive some marginally profitable operations out of business. Moreover, S. XXXX provides that tribes seeking a license to operate bingo must pay for the cost of the necessary background investigation. Similar requirements are placed on applicants for casino licenses in Nevada and New Jersey. Costs of background investigations are thus not spread among all the tribes. This is fair because a tribe whose application presents no problems will be charged less than one whose application indicates it may, for example, be associated with a management contractor believed to be associated with criminal elements, thereby requiring a substantial inquiry.

H.R. 1920 adopts a different approach to funding the Commission. Because, as discussed above, the Commission established by H.R. 1920 has no authority to issue licenses to tribes (rather it can only approve or disapprove tribal ordinances), the Commission would not conduct the type of examination of a proposed bingo operation required in S. XXXX. Consequently, there is no provision in H.R. 1920 for a tribe's paying for an investigation before it starts operation. Such investigation as the Commission would conduct in determining whether to approve a tribal bingo ordinance would apparently be treated as a routine expense of the Commission and assessed against all the other tribes. We would submit that is not fair to tribes whose bingo ordinances are approved, particularly if the Commission has to go to great expense only to determine ultimately that a particular tribe's ordinance should not be approved.

H.R. 1920 provides that at least three-quarters of the annual budget of the Commission is to be derived from the tribal assessments. Thus, up to one quarter of the budget will be borne by the taxpayers, an unacceptable provision particularly in times of fiscal restraint. Moreover, instead of allowing the Commission to set the amount of the assessment at a percentage of tribal revenue that would provide even three-quarters of the Commission's budget, H.R. 1920 provides for a maximum assessment of two and one-half percent of each tribe's gross revenue (i.e., the amount of money wagered minus the money paid out as prizes). Each tribe, regardless of the size or profitability of its gaming operation, would pay the same two and one-half percent, and the total sum may, or may not, be enough to pay three quarters of the Commission's expenses. This potential gap in revenue is apparently to be made up by appropriations. Subsection 17(b)(2) of H.R. 1920 provides that the Commission's budget may include a request for appropriations in an amount not to exceed one third of the funds derived from the assessments. 13/

13/ S. 902 provides that the expenses of its regional Commissions are to be defrayed by assessments on each tribe in the region that operates gaming. The amount of the assessments are to be determined by the tribes at the time they establish a regional Commission.

Rulemaking and Inspection Powers

Both S. XXXX and H.R. 1920 provide that the Commission shall have rulemaking and inspection power. However, S. XXXX is generally much more detailed than H.R. 1920. Special mention should be made of the recognition given to the Indian tribal governments in S. XXXX. While that bill provides for more control over gaming than does H.R. 1920, it, too, recognizes the tribes as governments. For example, subsection 305(b) provides that the Commission may adopt rules allowing the tribes to promulgate their own rules on a number of important aspects of a bingo operation such as rules governing the cost of admission and of the cards, hours of play, and the amount of prize money that may be awarded. The subsection also requires that the Commission must, to the extent practical, contract with such a tribe for the enforcement of such rules. Subsection 305(c) states explicity that nothing in the the Act precludes a tribe from exercising regulatory power over a bingo establishment within its jurisdiction not inconsistent with the Act or Commission regulations.

Conclusion

Mr. Chairman, throughout my testimony I have described how S. XXXX more closely controls Indian bingo than does H.R. 1920. That is because, as I have explained, high stakes gaming requires extensive regulation. Effective regulation cannot be accomplished by representatives of the industry being regulated, particularly the gaming industry. Consequently, we in the Administration have developed S. XXXX to regulate Indian gaming in a way that will preserve it as a source of tribal revenue and, consequently, strengthen tribal governments.[14/]

Mr. Chairman, that concludes my prepared remarks and I would be happy to answer questions at this time.

[14/] S. XXXX also reflects some provisions of earlier drafts of H.R. 1920 which we found to be helpful.

PREPARED STATEMENT OF FRANK A. RYAN, DEPUTY TO THE ASSISTANT SECRETARY, INDIAN AFFAIRS (TRUST AND ECONOMIC DEVELOPMENT), DEPARTMENT OF THE INTERIOR

Mr. Chairman and members of the Committee, I am pleased to present the views of the Department of the Interior on S. 902, H.R. 1920, and a bill proposed by the Administration, each of which relate to gaming in Indian country.

We strongly recommend enactment of the "Indian Gambling Authorization and Regulation Act of 1986", which was proposed in the joint May 20,1986, letter from the Departments of the Interior and Justice to the President of the Senate.

Mr. Chairman, I request that my prepared statement and the May 20 letter and the bill and section by-section analysis enclosed with it be placed in the hearing record. The analysis is a detailed explanation of the provisions in the Administration's bill.

There has been, and continues to be, a growth of gambling businesses on Indian lands. Bingo is the most common form but there are variations of bingo and casino-type gambling and pari-mutuel betting in operation or proposed. A Bureau of Indian Affairs survey indicates that there are some 108 gambling facilities on Indian land. Of these facilities, 104 had bingo, 93 had pull tabs or punch cards, 15 had card games, 4 had casino gaming, and 15 had other gambling activities.

The survey only yielded incomplete information on the amount of money involved. However, more than a dozen tribes each reported gross receipts of over $1 million annually with the highest gross receipts for a tribe reported at about $15.5 million annually. We do not believe that a national estimate of $100 million annually is excessive. The lack of any regulatory authority other than the individual tribes themselves makes the collection of reliable information difficult if not impossible.

A number of new gambling ventures are in the planning or proposal stage, including dog and horse racing tracks with gambling facilities. The Department also has had requests that land be taken into trust for gambling and other purposes. In some cases this land is away from the tribe's reservation and nearer population centers or highways in order to have greater access to non-Indian customers. Recently we issued a notice that we will not take off-reservation land in trust or give it reservation status for the purpose of establishing a gaming operation.

The reasons for the growth in gambling on Indian land are readily apparent. The Indian tribal governments see an opportunity for income that can make a substantial improvement in the tribe's conditions. The lack of any State or Federal regulation results in competitive advantages over gambling regulated by the States, including no State imposed limits on the size of pots or prizes, no restrictions by the State on days or hours of operation, no costs for licenses or compliance with State requirements, and no State taxes on tribal gambling operations.

While there can be economic benefits to tribes from gaming enterprises, there are major jurisdictional conflicts between States and tribes as to the extent of State jurisdiction, if any, over the gaming activities.

In general, State laws are not applicable to Indians within Indian reservations absent the consent of Congress. The Federal Government and the tribes exercise jurisdiction over Indian-related matters on most Indian reservations to the exclusion of the States. However, jurisdictional issues arising on Indian reservations are often in the courts. The proper balance of Federal, tribal, and State jurisdiction has been litigated in various contexts.

Recently the Supreme Court summarized the relevant principles governing the application of State law to Indian country:

> [I]n demarcating the respective spheres of State and tribal authority over Indian reservations, we have continued to stress that 'Indian tribes are unique aggregations possessing attributes of sovereignty over both their members and their territory'.... Because of their sovereign status, tribes and their reservation lands are insulated in some respects by an 'historic immunity from State and local control',... and tribes retain any aspect of their historical sovereignty not 'inconsistent with the overriding interests of the National Government.' (citations omitted) New Mexico v. Mescalero Apache Tribe, 462 U.S. 324 (1983).

Even where the States lack jurisdiction over Indian reservations, however, State law may be applicable through the Assimilative Crimes Act. The Assimilative Crimes Act, 18 U.S.C. 13 (ACA) is applicable to "Indian Country" by virtue of 18 U.S.C. 1152. See United States v. Marcyes, 557 F.2d 1361, 1365 n.1 (9th Cir. 1977). The ACA provides in pertinent part:

> Whoever within [a Federal enclave] is guilty of any act or omission which, although not made punishable by any enactment of Congress, would be punishable if committed or omitted within the jurisdiction of the State ... in which such place is situated, by the laws thereof in force at the time of such act or omission, shall be guilty of a like offense and subject to a like punishment.

The exact scope of the State laws assimilated into Federal law through the ACA has not been definitively determined by the courts. However, some court decisions indicate that while the Federal Government may enforce on Indian reservations the "criminal-prohibitory" laws of the State in which the reservation is located, it may not be able to enforce State "civil-regulatory" laws (even if they are accompanied by criminal law type penalties). See, e.g., United States v. Farris, 624 F.2d 890, 897 (9th Cir.1980), cert. denied, 449 U.S. 1111 (1981); United States v. Marcyes, supra, 557 F.2d at 1364.

The criminal-prohibitory/civil-regulatory distinction applied to the ACA in those cases seems to be the same distinction applied in cases involving the interpretation of Public Law 83-280 (67 Stat. 588), 18 U.S.C. 1162, 28 U.S.C. 1360. E.g., Barona Group of the Capitan Grande Band of Mission Indians v. Duffy, 694 F.2d 1185, 1188 (9th Cir. 1982), cert. denied, 461 U.S. 929 (1983), Seminole Tribe v. Butterworth, 658 F. 2d 310 (5th Cir. 1981), cert. denied, 455 U.S. 1020 (1982), Cabazon Band of Mission Indians v. County of Riverside, 783 F.2d 900 (9th Cir. 1986). Public Law 83-280 was a 1953 statute which vested certain States with criminal and civil jurisdiction over Indian country and authorized other States to assume jurisdiction. Under a 1968 provision, Indian consent is required for any further assumption of State jurisdiction. See 25 U.S.C. 1321-1326.

The civil jurisdiction which Congress authorized the States to assume in PL 83-280 is limited to jurisdiction over private causes of action and does not include taxing or regulatory jurisdiction. Bryan v. Itasca County, 426 U.S. 373 (1976). Thus, the question addressed in the Seminole, Barona, and Cabazon cases was whether the State bingo laws at issue were criminal-prohibitory and therefore enforceable by the States under their PL 83-280 grant of criminal jurisdiction, or civil-regulatory and therefore inapplicable. The courts concluded that the State laws were civil-regulatory in nature because the States did permit the playing of bingo under certain conditions. Neither of the States prohibited bingo outright as do Utah, Mississippi, Arkansas, Indiana, and Hawaii.

Application of the criminal-prohibitory/civil-regulatory distinction to the ACA has been questioned. See United States v. Dakota, No. M84-246 CA2 (W.D. Mich. June 28, 1985). In that case, the court pointed out that the distinction was developed in PL 83-280 cases "to prevent States from interfering too greatly with tribal sovereignty." It then stated:

> Section 1955 [referring to 18 U.S.C. 1955, the Organized Crime Control Act of 1970] and the Assimilative Crimes Act, however, do not present the same problem. They do not grant States jurisdiction over tribal matters. Rather they provide for Federal jurisdiction. The question arises as to whether a principle developed to limit State jurisdiction over tribal affairs should be extended to limit Federal jurisdiction over tribal affairs. (Emphasis added).

The Supreme Court of Oklahoma has rejected the criminal-prohibitory vs civil-regulatory distinction outright on the ground that it is not very clear and has substituted a "balancing approach" for the resolution of conflicting

Indian, Federal and State interests in gambling issues. State v. Seneca-Cayuga Tribe, _____ Okla. _____ (No. 60,074, July 2, 1985).

While the Supreme Court declined to review the Seminole and Barona decisions, on June 9, the Supreme Court noted probable jurisdiction of the State of California's appeal of the Ninth Circuit's decision in Cabazon Band of Mission Indians v. County of Riverside, et al. and Morongo Band of Mission Indians v. County of Riverside, et al., 783 F.2d 900 (9th Cir. 1986). In Cabazon and Morongo, the Ninth Circuit held that the state and county could not enforce their bingo laws and card room ordinances against tribal games on the Cabazon and Morongo Reservations. The Court concluded that the tribal games did not violate state public policy and that the state and county gambling laws were civil/regulatory in nature and not applicable to the tribal games. The Court then engaged in a "Particularized inquiry" into "the nature of the state, federal, and tribal interests at stake", an inquiry the state had argued was required by the Supreme Court's decision in Rice v. Rehner, 463 U.S. 713 (1983), and concluded that the federal and tribal interests in tribal self-government and economic self-sufficiency outweighed the state interest in protecting against the potential for intrusion of organized crime. Other Federal statutes which must be considered in evaluating tribal-state jurisdictional issues and the regulation of reservation gambling include:

* The Organized Crime Control Act of 1970, 18 U.S.C. 1955, which prohibits gambling businesses which are in violation of the laws of the State in which they are located. The Federal courts have so far concluded that gambling activities which are regulated rather than prohibited by State law are not

against the public policy of the State and therefore not violative of the Organized Crime Control Act. On the other hand, in the Farris case, 18 U.S.C. 1955 was held applicable to Indians and non-Indians who operate a casino on an Indian reservation in Washington, a State where casino gambling is prohibited.

* 15 U.S.C. 1175, which prohibits the possession or use of gambling devices on Indian reservations.

* 18 U.S.C. 1301-1307, which prohibits advertising of lotteries, including bingo, through the mail or on radio or TV, with exceptions for State-run lotteries.

* 25 U.S.C. 81, which subjects tribal gambling management contracts to approval by the Secretary of the Interior.

The present law concerning gambling on Indian land is unclear largely because much of it depends on State law interpretations which have varied in the courts.

Several bills have been introduced during the 99th Congress regarding gaming activities on Indian land, including those which are the subject of this hearing. S. 902 and H.R. 1920 provide for some regulation of gaming on Indian land but we do not believe that they provide for adequate direction and enforcement. A sound Federal policy for gambling on Indian land must be based on a number of factors.

Gambling historically has been subject to government regulation because of the potential for crime-related problems. The Department of Justice's testimony today discusses some of these problems.

Indian reservation gambling provides economic benefit to many of the tribes involved, especially those with no valuable natural resources or other significant sources of income. Tribes have used their bingo income for a variety of purposes relating to the welfare of their members, including supplementing activities that are financed by the Federal Government. Examples include the Creek Nation's payment of contract medical expenses for tribal members; the Sycuan Band's use of the funds for emergency loans, home repairs, fuel for homes, fire department equipment and operation, road repairs, and flood control repairs, the San Juan Pueblo's funding of a senior citizens program; the Fond du Lac Band's use of the funds to supplement the Head Start and other programs and to aid the construction of a health facility, and maintain and improve school and other public facilities and roads; and the Shakopee or Prior Lake Sioux Community's use of the funds to build a community center, dental clinic and health facility, and purchase a fire truck.

President Reagan's Indian policy statement includes the following passages which should be kept in mind in developing the Federal policy on Indian gambling:

> It is important to the concept of self-government that tribes reduce their dependence on Federal funds by providing a greater percentage of the cost of their self-government. Some tribes are already moving in this direction. This administration pledges to assist tribes in strengthening their governments by removing the Federal impediments to tribal self-government and tribal resource development...This Administration affirms the right of tribes to determine the best way to meet the needs of their members and to establish and run programs which best meet those needs...
>
> It is the policy of this Administration to encourage private involvement, both Indian and non-Indian, in tribal economic

> development. In some cases, tribes and the private sector have already taken innovative approaches which have overcome the legislative and regulatory impediments to economic progress.
>
> Since tribal governments have the primary responsibility for meeting the basic needs of Indian communities, they must be allowed the chance to succeed...

With the foregoing guidelines in mind, the "Indian Gambling Authorization and Regulation Act of 1986", was developed by the Departments of the Interior and Justice. That bill reflects our view that Federal legislation on the subject of Indian gambling should address three separate categories of gambling: (1) social and Indian ceremonial; (2) bingo; and (3) all other forms.

Social and ceremonial gambling is not operated for profit and involves only small stakes and only the Indian community. Therefore, we believe that no regulation need be imposed on these activities.

Bingo, however, is another matter. Economic benefits to participating tribes already appear to be significant. We wish to permit continuation of Indian bingo as a matter of Federal policy but recognize that it has to be regulated effectively to avoid the potential law enforcement problems discussed by the Department of Justice at this hearing.

We oppose State control over bingo because it would drive Indian bingo out of business by subjecting it to the days, hours, prize and other restrictions of the States. Some States limit bingo to charitable organizations and at least one prohibits the payment of compensation to employees operating the games. We believe that the Federal and tribal law enforcement problems involved with bingo are manageable, that such enforcement can be financed by the proceeds of the games, and that State regulation is not warranted.

All other forms of gambling (such as pari-mutuel and casino gambling) could be economically beneficial, but the potential law enforcement problems involved in providing the necessary Federal and tribal regulation are so great as to outweigh the economic benefits to the tribes. We recognize the importance of tribal sovereignty, but the Administration's bill reflects our view that the States should be empowered to regulate such hard core gambling on Indian land because (1) of the significant need for law enforcement oversight; and (2) of the significant additional law enforcement burden involved in Federal and tribal regulation of an area where the States are already regulating such gambling. We oppose making such gambling a Federal crime on Indian land where the tribe and the State choose to permit it.

The Administration's bill was developed in line with the foregoing factors and represents a variety of compromises and accommodations. I would like to summarize the explanation in the section-by-section analysis included with our May 20 letter.

Our bill establishes a full-time three member bingo regulatory commission. The commission would be authorized to license and regulate bingo operated by tribes or tribal organizations on Indian land. The bill provides a traditional definition of "bingo" and would make it a Federal crime to operate bingo games on Indian land without a license.

Our bill provides criteria for the commission's regulations based primarily on law enforcement rather than economic concerns. For example, the regulations would require audits, investigations of employees, that profits be used only for the benefit of the tribe, that games are operated only on the reservation or trust land where the tribe resides as a community and exercises governmental jurisdiction, and that limits on prizes may be established. The Secretary of the Interior would be authorized to disapprove regulations proposed by the commission. The commission would be authorized to issue subpoenas and bring civil actions to enforce its regulations and to suspend or revoke licenses for violations of its regulations.

Tribes could continue to enforce their gambling ordinances or regulations if they are not inconsistent with the commission's regulations or Federal law. In addition, the commission may permit a tribe to adopt regulations in lieu of certain commission regulations and provide financial assistance to the tribe for the enforcement of those regulations.

Under our bill the chairman and one other member of the bingo commission would be appointed and subject to removal by the Secretary of the Interior. The third member would be appointed and subject to removal by the Attorney General. Appointment would be based on statutory criteria that would ensure that members have the background to do an effective job.

The commission would establish a budget and license fee structure that would be subject to approval by the Secretary. The fees charged must cover the full cost of the commission (other than start-up costs and commissioners' salaries) and of the related function of the Department of the Interior's Inspector General.

Our bill would authorize the Secretary (acting through the Inspector General) to investigate and review the commission's activities. The Inspector General would conduct management and financial field audits and provide reports to the Secretary, the Attorney General, the Congress, and the tribes involved. The Inspector General's activities would be funded by reimbursements from the commission.

In addition, our bill reaffirms the Secretary's authority to approve leases and management contracts and extends the Secretary's authority to the approval of all tribal ordinances relating to gambling.

Mr. Chairman, we will be most pleased to work with the Committee and its staff to achieve enactment of legislation in line with the Administration's bill.

This concludes my statement. I will be happy to answer any questions the Committee may have.

PREPARED STATEMENT OF
BRIAN McKAY,
ATTORNEY GENERAL FOR THE STATE OF NEVADA

I am Brian McKay, Attorney General for the State of Nevada. I am here representing the position of the State of Nevada regarding S. 902 and, less formally, with respect to the recently proposed administration bill on the regulation of Indian gaming.

Nevada stands in a unique position with respect to the issue of Indian gaming and its regulation. During the past 55 years, Nevada has enjoyed the many benefits and, at times, suffered the unpleasant side effects of legalized casino gambling. We Nevadans have learned that legalized gambling can only serve the long-term interests of a community when it is strictly regulated. Although our efforts at gaming regulation have not always been immediately successful, we have developed from our positive and negative experiences a just and effective mechanism for policing our principal industry.[1]

Unlike New Jersey, Nevada has also been favored by a lengthy association with a number of economically-active Native American tribes living within our geographical boundaries. Commercial gaming, however, has only recently attracted the interest of any of these tribes as a potential source of revenue. At this early stage in the development of Indian gaming in Nevada, an important decision must be made as to whether the federal government and the various tribal governments will be required to create and implement an entirely new system to control this new industry, or whether they will be permitted to use the sound regulatory apparatus that is already in place in our state.

My concern with the answer provided to this question by S. 902 is several-fold. As the chief law enforcement officer of Nevada, I have seen how difficult it is to eradicate a criminal element once it has gained a foothold in a gaming establishment and how easily its influence spreads to other establishments. Nevada's own early history of gaming control demonstrates just how long it takes for a new regulatory system to become effective in identifying and dealing with the many forms of organized crime influence.[2] Given this initial lag in regulatory effectiveness, it must be assumed that tribal regulators and the proposed new Regional Indian Gaming Commissions would be placed, from the very beginning, in the unenviable position of playing "catch-up ball" to the ever-changing schemes devised to place criminal organizations at the receiving end of gaming revenues.

S. 902 makes this task infinitely more difficult by placing the original responsibility of devising new gaming ordinances and regulations and the principal duty of enforcing those laws in the hands of the same tribal bodies that will have a direct proprietary interest in the affected gaming operations. Moreover, under this bill, the Secretary of the Interior and even the Regional Indian Gaming Commissions will have only limited financial resources and personnel to oversee the regulatory activities of the individual tribal units.

My concern here is not with the integrity of individual Native American regulators, but with a system that places public servants in positions of great financial temptation and then, somewhat naively, expects them to act selflessly in every case.

In Nevada, great care is taken to prevent any gaming regulator from having even an insignificant interest in an establishment subject to his possible jurisdiction. S. 902, on the other hand, institutionalizes a very dangerous form of self-regulation.

I further believe that the weaknesses inherent in S. 902 would also interfere with the ability of state regulators to control the influence of criminal and corruptive elements outside Indian lands. Both legal and illegal gambling have long been a major source of funding for organized crime. This funding ultimately finds its way into other legitimate and criminal businesses. Any business operation that engages in large cash transactions stands a good chance of being a target for organized crime involvement. If poorly regulated, that chance becomes a likelihood.

Once a criminal organization can begin "skimming" the revenue of one business, it must find other investment opportunities for those funds. Because they are also cash-intensive businesses, it is natural that state-regulated gaming operations would be important secondary targets for the investment of funds generated by "skimming" at Indian gaming establishments.

Additionally, given the potentially less stringent, and therefore less costly, regulatory system provided by S. 902, state-regulated gaming establishments would be placed at a significant economic disadvantage in comparison to operations located on Indian lands. In the case of Nevada, Indian lands are often situated immediately adjacent to major gaming districts and casinos built on them would be in direct competition with nearby state-regulated gaming businesses.[3] It has been our experience that competitively disadvantaged businesses often feel compelled to seek a competitive "edge" through organized crime funding and influence. This possibility would require the additional attention of Nevada's already busy regulators and present even greater problems for Native American gaming regulators and operators.

Another of my concerns relates to the sensitivity of Nevada's tourism industry to adverse publicity resulting from patron disputes over unpaid wagers. Although lawyers and county recorders may recognize that a particular gaming establishment lies on Indian lands, tourists are seldom able to make that distinction. Their possible quarrels with Indian gaming establishments would inevitably reflect upon the entire gaming industry located within the borders of this state. Under S. 902, Nevada's state-regulated gaming industry would be forced to share the economic fallout of the inadequate regulation of casino-patron relations at Indian casinos at the same time state officials were denied authority to improve those relations by appropriate intervention.

Perhaps the greatest shortcoming of S. 902 is found in its simplistic approach to the very complex problem of criminal infiltration into gaming establishments. This naivete is highlighted by the bill's overriding concern with protecting the formal proprietary interest of Native American tribes in gaming businesses. In reality, it often doesn't matter who nominally owns a gaming establishment. The important question is whether that owner is in a sufficiently independent position to prevent the diversion of profits. This diversion can occur through direct "skimming," "sweetheart" loans and supply contracts, or fraudulent gaming transactions. Because of these devices, it would not matter that the "net revenues" from tribal gaming operations could only be used for tribal purposes, if there were no "net revenues" because of illegal and exorbitant "costs" of doing business.

Without the daily involvement of a great many enforcement, audit, and intelligence agents, closely monitoring the activities of gaming establishments, it is much too easy for hidden interests to replace proprietary owners as the true recipients of the economic benefits of "legalized" gaming. S. 902 does not appear to provide the manpower or the financial resources necessary to insure that this type of active on-site regulation will be provided by the Secretary of the Interior, the Regional Indian Gaming Commissions, or the individual tribes.

In practice, the lack of any statutory provision for such resources and the geographical distance of the offices of the Interior Department and of the proposed Regional Indian Gaming Commissions from actual Indian gaming would leave the lion's share of ongoing investigation to tribal regulators. Again the system would come down to one of self-regulation.

Furthermore, none of the above problems is solved by the "state standards" test for licensing requirements and for regulations governing games. In Nevada, licensing requirements are often stated in relatively broad terms, the practical interpretation of which is left to the sound discretion of the

State Gaming Control Board and the Nevada Gaming Commission. For example, under NRS 463.170(2), an applicant may not be granted a gaming license unless the Commission is satisfied that he or she is

> (a) A person of good character, honesty and integrity;
>
> (b) A person whose prior activities, criminal record, if any, reputation, habits and associations do not pose a threat to the public interest of this state or to the effective regulation and control of gaming, or create or enhance the dangers of unsuitable, unfair or illegal practices, methods and activities in the conduct of gaming or the carrying on of the business and financial arrangements incidental thereto; and
>
> (c) In all other respects qualified to be licensed or found suitable consistently with the declared policy of the state.

Additionally, before granting a license to operate a gaming establishment, the Commission must be satisfied that an applicant "has adequate business probity, competence and experience, in gaming or generally," and that his proposed financing is "[a]dequate for the nature of the proposed operation" and "[f]rom a suitable source."[4]

The regulation of games in Nevada is also more than a simple matter of legislative decree. As has been noted, it takes the efforts of many agents, working day and night, to give effect to the written requirements placed upon licensed gaming operators. Unless the federal government and the tribes are willing to provide a greater allocation of resources to enforce their version of a state's regulations than is provided for in the present provisions of S. 902, tribal regulations will be nothing more than words on paper. There will be little or no real regulation of gaming on Indian lands.

In short, state regulatory standards are simply not susceptible of uniform application among different regulatory bodies. Their interpretation and application depends heavily upon the experience, judgment, and resources of those bodies. Therefore, even under the "state standards" test found in section 6(c) of S. 902, there would be no promise that the tribal, regional, or national regulation of Indian gaming would coincide, in any meaningful way, with state regulation outside Indian lands.

In my view, S. 902 is a misguided effort to sidestep the clear interest states have in not only prohibiting, but also regulating, all gaming activities within their borders which impact upon their economies and citizens. It is clear that modern Indian gaming is not directed toward tribe members. It is meant to attract large numbers of non-Indians from outside the reservation and the state. It is run primarily by non-Indians in the contractual employ of the proprietary tribes. S. 902 itself anticipates that this sort of non-Indian management arrangement will be a continuing norm.[5] Only their ownership by Indians and their location in "Indian country" make these gaming establishments different from any other gaming operation in a state.

To a limited extent, S. 902 recognizes the states' interest in Indian gaming activities by permitting state legislatures to prevent certain forms of gaming from occurring on Indian lands by criminal prohibition. S. 902 should have further permitted state governments to restrict such activities to a lesser extent by licensing and regulation.

My views on the issue of state control over Indian gaming are perhaps best expressed in a resolution of the Conference of Western Attorneys General, which I introduced and the Conference approved unanimously at its June 7, 1985, meeting in Juneau, Alaska. I have included a copy of this resolution as "Exhibit 1." A similar resolution was also approved by the National Association of Attorneys General, at their July 1985 meeting in Colorado Springs, Colorado. See Exhibit 2. I would urge the Committee to examine these resolutions and to adopt the policies set forth in them in formulating a new law aimed at the effective regulation of Indian gaming.

I believe that the newly proposed administration bill on Indian gaming makes an important effort to come to grips with state concerns over federal or tribal regulation of Indian gaming. It would leave the regulation of commercial bingo on Indian lands in the hands of a full-time commission located in the Department of the Interior, except in the five states which ban bingo. In those states, Native American tribes would be prohibited from engaging in commercial bingo. All other forms of gaming, except those which are only ceremonial in nature, would be left to regulation by the states.

Although I can see no rational distinction between the regulatory requirements of bingo and those of other forms of gambling, the administration bill is still far superior to S. 902 and its House counterparts.

In closing, I want to state most clearly that Nevada is not opposed to gaming being conducted by Native Americans, on or off their tribal lands. At its core, Indian gaming is no more difficult to regulate than gaming conducted by non-Indians. Certainly, Native Americans are no more prone to corruption than are non-Indians. In Nevada's experience, however, we have found that any form of gaming is very difficult to regulate. In both Nevada and New Jersey, the regulation of casino gaming has required an enormous financial and manpower commitment, which S. 902 does not even begin to contemplate.

In these days of Gramm-Rudman and sharp-eyed budget-makers, I would encourage you to think carefully before you reject our interested offer of an already-functioning system of effective gaming regulation. In return, we only ask to be permitted to protect ourselves against the same unscrupulous individuals who would cheat the general public and "skim" tribal funds in order to corrupt both Indian and non-Indian businesses and governments. Working together, we can bring the full benefits of legalized gaming to both the Native American tribes and the states which choose to receive those benefits.

FOOTNOTES

1. For a brief discussion of Nevada's system of gaming regulation, I would refer the Committee to the written commentary provided by Michael D. Rumbolz, a member of the State Gaming Control Board of Nevada, to this Committee on June 26, 1985.

2. For a history of Nevada's early attempts at gaming control, *see* M. Glass, *Nevada's Turbulent '50's: Decade of Political and Economic Change* 24-38 (1981); R. Laxalt, *Nevada: A Bicentennial History* 89-112 (1977); R. Elliot, *History of Nevada* 326-37 (1974).

3. In Nevada, there are Indian lands located approximately one-quarter mile from downtown Las Vegas and immediately adjacent to the Bally's Grand Hotel in Reno.

4. Nev. Rev. Stat. § 463.170(3) (1985).

5. *See* S. 902, 99th Cong., 1st Sess. § 7 (1985).

CONFERENCE OF
WESTERN ATTORNEYS GENERAL
THE COUNCIL OF STATE GOVERNMENTS

720 SACRAMENTO STREET, SAN FRANCISCO, CALIFORNIA 94108 (415) 986-3760

APPROVED RESOLUTION NO. 85-1

INDIAN GAMING POLICY STATEMENT

(Introduced by Attorney General Brian McKay, Nevada)

WHEREAS, unregulated Indian gaming represents a threat to the public welfare of the nation because it provides new havens for organized crime to operate in total disregard of state laws concerning gaming; and

WHEREAS, unregulated Indian gaming represents a threat to the welfare of the various Indian tribes because it may subject the tribes to the corrupting influences of organized crime; and

WHEREAS, the regulatory apparatus proposed by S902 and HR1920 are totally inadequate to address the problem of infiltration and control by organized crime of Indian gaming; and

WHEREAS, the states have traditionally regulated gaming and provide the best means of addressing the threats posed by unregulated Indian gaming;

NOW, THEREFORE, BE IT RESOLVED that the Conference of Western Attorneys General urge President Reagan and the Interior and Justice Departments to support the states in their litigation in the Federal courts to assert jurisdiction over Indian gaming; and

BE IT FURTHER RESOLVED that the Conference of Western Attorneys General urge Congress to recognize that state and local jurisdiction over gaming on Indian reservations is essential to state sovereignty and should not be taken over by the Federal government.

(RESOLUTION APPROVED BY THE CONFERENCE AT ITS 1985 ANNUAL MEETING ON JUNE 7 IN JUNEAU, ALASKA)

AG14R85-1

EXHIBIT 1

NATIONAL ASSOCIATION OF ATTORNEYS GENERAL

Summer Meeting
Colorado Springs, Colorado
July 15 - 18, 1985

RESOLUTION
VI

GAMBLING ON INDIAN RESERVATIONS

WHEREAS, unregulated Indian gambling presents a threat to the public welfare of the nation because it provides new havens for organized crime to operate in total disregard of state laws concerning gambling; and

WHEREAS, unregulated Indian gambling presents a threat to the welfare of the various Indian tribes because it may subject the tribes to the corrupting influences of organized crime; and

WHEREAS, the oversight function by the Secretary of the Interior, proposed by S. 902, H.R. 1920, and H.R. 2404, is totally inadequate to address the problem of infiltration and control by organized crime of Indian gambling; and

WHEREAS, the states have traditionally regulated gambling, as they do liquor, and provide the best means of addressing the threats posed by unregulated Indian gambling;

NOW, THEREFORE, BE IT RESOLVED, that the National Association of Attorneys General calls upon the Department of Justice to enforce existing federal laws relating to gambling on Indian reservations, including, where appropriate, the Federal Assimilative Crimes Act and the Organized Crime Control Act of 1970; and

BE IT FURTHER RESOLVED, that the National Association of Attorneys General calls upon the Department of the Interior to immediately cease and desist from authorizing or approving gambling activities on Indian reservations where such gambling activities violate existing state and federal laws; and

BE IT FURTHER RESOLVED, that the National Association of Attorneys General urges the President and the Departments of Justice and Interior to support the states in their litigation in the federal courts to assert state jurisdiction over Indian gambling; and

BE IT FURTHER RESOLVED, that the National Association of Attorneys General urges Congress to enact legislation to recognize specifically the states' jurisdiction over gambling operations on Indian lands; and

BE IT FURTHER RESOLVED, that the National Association of Attorneys General authorizes its Executive Director and General Counsel to transmit these views to the Administration, the Congress, and other interested parties.

Attorney General of New Mexico

PAUL BARDACKE
Attorney General

P.O. Drawer 1508
Santa Fe, New Mexico 87504
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C.G. MARK
STEPHEN WESTHEIMER
Deputy Attorneys General

PREPARED STATEMENT OF PAUL BARDACKE

NEW MEXICO ATTORNEY GENERAL BEFORE THE SENATE SELECT COMMITTEE ON INDIAN AFFAIRS CONCERNING S. 902, H.R. 1920 AND THE ADMINISTRATION'S PROPOSED "INDIAN GAMBLING AUTHORIZATION AND REGULATION ACT OF 1986"

June 17, 1986

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

I am Paul Bardacke, Attorney General of the State of New Mexico. I thank this Committee for the opportunity to comment on three separate Indian gambling bills, S. 902, H.R. 1920, and the administration's proposed Indian Gambling Authorization and Regulation Act of 1986 which, as I prepare this testimony, has not formally been introduced in the Senate. I appear here today in support of the administration bill. I cannot support S. 902 or H.R. 1920 in their present forms.

Because of citizen concern over Indian gambling and because of the legal issues surrounding Indian gambling, I have personally spent a great deal of time on this issue over the past three years. I am convinced that Congress is the proper forum for resolving this issue rather than the courts. I commend this Committee for trying to find a legislative solution to the problem of defining the proper role for Indian gambling.

New Mexico has four tribes currently operating bingo games with a fifth game ready to begin operation. These games represent an important source of revenue and employment to Indian tribes that are experiencing difficult economic times. While I appreciate the economic benefits of these games to the tribes, I must acknowledge hearing a great deal of concern and resentment from many in the non-Indian community over the availability of these games. Each of the three bills being discussed today acknowledge that the benefits of high stakes Indian bingo outweigh any disadvantages. I do not dispute that conclusion. To date high stakes Indian bingo games have not created law enforcement problems in New Mexico and there appears to be growing non-Indian acceptance of them. Given this current state of affairs I do not oppose high stakes Indian bingo as it is currently conducted in New Mexico.

At the same time New Mexico faces the possibility of more extensive tribal gambling that is not acceptable to the non-Indian community. Pari-mutual dog racing, an activity which is criminal under New Mexico law, was planned for a reservation bordering New Mexico's largest city until disapproved by the Secretary of Interior. The authority for that disapproval is presently being litigated. Citizen concern over forms of gambling other than bingo is very high in New Mexico and whenever the possibility of such gambling is mentioned in the newspapers or television, my office is inundated with calls.

On balance I find that the position expressed in the administration bill represents an excellent compromise. That bill legalizes bingo on Indian reservations, but limits all other forms of gambling in which non-Indians are involved to the exact games allowed by the states under the same regulations as are imposed by the states. Unlike the administration proposal, neither S. 902 nor H.R. 1920 deals with the central issue in the area of Indian gambling--defining which Indian gambling activities should be legalized and which should be prohibited. I support the administration proposal because it deals with this central issue and, I believe, reaches a reasonable position.

Twice in the past I have submitted comments on proposed Indian gambling legislation. While previous bills which I have examined have had points to commend them, each has also had limitations about which I have expressed concerns. I find that the proposed administration bill resolves each of my previous concerns. The great advantage to the proposed administration bill is that it deals with the tough issues and it deals with those issues clearly and directly and in a manner that will avoid endless litigation. I should like to comment on each of the proposed bills.

S. 902 -- S. 902 provides a mechanism for approving tribal ordinances and management contracts which, arguably, will protect Indian Tribes. This bill, however, does nothing to answer the important question of what gambling is legal. S. 902's biggest problem is its failure to deal with this issue, and S. 902 thereby insures that there will be endless litigation regarding which forms of gambling are legal.

There are other problems with S. 902:

(1) S. 902 provides that approval of tribal gambling ordinances is mandatory if certain minimum requirements are met, even if such ordinances are not in the best interest of the tribe. The United States' responsibility to tribes should go beyond a mechanical approach to the approval of ordinances.

(2) S. 902 provides that the conduct of gaming activities on a reservation, which activities have not been approved by the Secretary or the Commission, will be punished by existing federal law. If, as a number of courts have held, it is not a violation of existing federal law for tribes to engage in certain gambling activities, there is no criminal sanction for failure to have a tribal ordinance approved. S. 902, therefore, creates no incentive for a tribe to seek approval of its gambling ordinances.

(3) "Indian country" pursuant to S. 902 includes all land "held by an Indian tribe...subject to a restriction by the United States against alienation." Arguably, any land purchased by a tribe in any location is subject to

restrictions on alienation. 25 U.S.C. Sec. 177 (No...conveyance of lands...from any...tribe of Indians, shall be of any validity...unless the same be made by treaty or convention entered into pursuant to the Constitution.) If a tribe violates gaming laws on such land, S. 902 provides that enforcement is to occur pursuant to tribal law or 18 U.S.C. Sec. 1152 (the Indian Country Crimes Act). 18 U.S.C. Sec. 1152, however, has a different definition of "Indian country" for purposes of jurisdiction than is found in S. 902. This second definition would not include off-reservation gambling and federal law, therefore, would also not apply to such lands. A tribe could arguably purchase land in downtown Albuquerque and be subject only to tribal law to control illegal activities.

H.R. 1920 -- H.R. 1920 ignores the issue of what gambling is lawful, by creating a four-year moratorium on Class III gambling. The toughest decision facing Congress is, therefore, delayed for four years. I find it difficult to believe that Congress needs four years to understand the impact of Indian gambling. Aside from the fact that H.R. 1920, like S. 902, avoids the most important issue related to indian gambling, H.R. 1920 has other problems:

(1) While H.R. 1920 makes most Class III gambling unlawful during the four-year moratorium, it is unclear which criminal provision will be used to punish this unlawful Class

III gambling. Arguably, H.R. 1920 assumes that all Class III gambling is illegal under present law and will be punished under existing criminal law provisions. Whether current law makes Class III gambling illegal is presently in litigation in a number of forums. If present law does not apply to Class III gambling, there is no law under which to punish such gambling. The four-year moratorium is meaningless as it only precludes that Class III gambling which is presently illegal. Litigation will continue on the issue of the present state of the law. I question the wisdom of passing a law that insures that litigation will flourish.

(2) The provision that Class III gaming operating as of January 1, 1986 can continue to operate if it is "otherwise legal under existing law" insures that there will be continued litigation over what is "otherwise legal under existing law."

(3) H.R. 1920 places Class I gaming, "social games for prizes of minimal value or traditional forms of Indian gaming engaged in by individuals as a part of or in connection with tribal ceremonies or celebration", within exclusive tribal control. Class I gambling is not limited to tribal members. There is nothing to preclude tribal ceremonies or celebrations 365 nights a year at which non-Indians are welcome. It is unclear if horse or dog races or betting on athletic competitions or dice or any of a

number of other activities would qualify as traditional forms of gambling. It is not clear who could challenge a tribal ordinance establishing such a Class I gaming system or how such a challenge could occur.

(4) Class II gaming, which is permitted under H.R. 1920, specifically includes "pull tabs, punch boards, and other games similar to bingo...." If the Chairman of the Commission approves video games or blackjack or dog racing because he determines such games are "similar to bingo", it is unclear who can challenge that decision or where that challenge could be brought.

(5) H.R. 1920 makes the approval of gambling ordinances mandatory if certain minimum requirements are met. No discretion is given to act in the best interests of the tribe or tribal members. No flexibility exists to deny approval if a problem is found other than those specifically set forth in H.R. 1920.

(6) Under H.R. 1920 a tribal enterprise is required to have its bingo ordinances approved by the Chairman of the Commission. As under S. 902, it is not clear what, if any, penalty is attached to the operation of a bingo operation which has not had proper approval. Since bingo is arguably lawful under present law, unless H.R. 1920 imposes some sanction for unlawful games, no presently existing law may exist which imposes sanctions.

Proposed Administration Bill -- At the time this testimony is being drafted, this proposal has not been introduced in the Senate although its provisions are well known. Indian gambling legislation cannot be discussed without mentioning this bill. All of the concerns that I have had with regard to past bills are dealt with in the administration proposal. The most important aspect of the administration proposal is that it is clearly drafted and will end time consuming and costly litigation. I commend the fine work of those who drafted this bill. I should like to comment on what will be the controversial portions of the proposal:

(1) Authority for No Limit Tribal Bingo Games

Many groups will oppose this provision. Some will argue that the Indian bingo cases were wrongly decided and should not form the basis for federal legislation. There are strong arguments on both sides of the issue of whether Indian bingo will in fact be upheld by the United States Supreme Court. That question is unimportant. In New Mexico, Indian bingo has not created any law enforcement problems. Where I have had access to information on the economic benefits of Indian bingo, the reports have been extremely positive. I find it difficult to fault the compromise position expressed in the administration proposal legalizing bingo but precluding more expansive gambling operations.

(2) Allowing State Law to Determine What is Permissable Indian Gambling for Games Other Than Bingo

A number of tribes will object to letting state laws and regulations be the standard for determining what activities are legal for gambling other than bingo. The tribes' objections will most likely be based on arguments of tribal sovereignty. While I support the right of Indian tribes to be free from state interference with regard to matters which are predominately internal to the tribes, Indian gambling is not a sovereignty issue. To the extent that such gambling is an internal matter it is subject only to tribal regulation pursuant to Section 401. To the extent that such gambling is set up to bring non-tribal members on to the reservation to avoid state law, its impact is almost exclusively off reservation, and the issue is not one of sovereignty.

(3) The Grant of State Jurisdiction to Enforce Gambling Laws Other Than Bingo Laws

In the past I have taken the position that there should be federal and not state criminal law jurisdiction over gambling violations on Indian reservations. I realize this position is contrary to many other state Attorneys General. My concern was a matter of practicalities. In New Mexico, the state never assumed general criminal jurisdiction over on-reservation Indians, the federal government exercises that general criminal authority. It seemed to be a waste of resources to have federal law enforcement officers, who are regularly on the reservations, ignoring criminal activities concerning gambling while state officers who have minimal contact with the reservations were forced to investigate criminal activity in what, in New Mexico, can be extremely remote areas. There is also a great deal of resentment and fear every time the states assume additional jurisdictional authority over Indian reservations. I will not argue that tribal concerns over the hostile relationship between state and tribal government is unfounded. It has, therefore, seemed to me that federal jurisdiction was more appropriate than state jurisdiction. At the same time I recognize that state regulated gambling activities, which in New Mexico would mean horse racing, can most effectively be regulated by the states rather than the federal government because states already have regulatory mechanisms in place.

The provision in the administration proposal which leaves primary enforcement authority in the state, but provides for federal criminal jurisdiction where justified, is a well considered compromise. I feel this solution, where both the state and federal government have criminal jurisdiction, will lead to cooperative efforts which will be more efficient and cost effective than placing criminal jurisdiction in only the state or only the federal government.

I express only one concern over the administration proposal. That concern is with Section 305(9) dealing with the dispensing of alcoholic beverages. It is not clear whether this is an alternative method to 18 U.S.C. Sec. 1161 for a tribe to obtain authority to sell liquor. 18 U.S.C. Sec. 1161 sets forth a specific procedure which must be followed prior to selling liquor in any country. Recent decisions of the United States Supreme Court have clearly determined the relationship between the states and tribes with regard to regulating liquor sales pursuant to Section 1161. It is not clear if the proposed Section 305(9) is in addition to, or an alternative to 18 U.S.C. Sec. 1161. If it is an alternative to Section 1161, it will be a matter for extensive litigation; if it is in addition to Section 1161, I have no concerns.

In closing I wish to again thank this Committee for the opportunity to speak on this important issue. I will be happy to answer any questions.

PREPARED STATEMENT OF ANDREW P. MILLER

Mr. Chairman and Members of the Committee:

My name is Andrew P. Miller. I am counsel for the American Greyhound Track Operators Association ("AGTOA"). It is a pleasure for me to appear before this Committee to give AGTOA's position on H.R. 1920, S. 902 and the Administration's bill, the Indian Gambling Authorization and Regulation Act of 1986 (hereinafter the "IGARA").

AGTOA is a non-profit corporation which was formed in April 1946. Its membership consists of the owners and operators of forty-six Greyhound racetracks located throughout the United States. Membership is open to all lawfully licensed Greyhound tracks whether they be owned by individuals, partnerships or corporations.

Greyhound racing is the sixth largest spectator sport in America. In 1985, the attendance at AGTOA's member tracks was 23,966,739. Some $2,698,934,362 was wagered at these tracks and, out of that, State and county governments received $188,654,522 in tax revenue. Thus, Greyhound racing is a significant industry whose growth, since the first circular track opened in 1919, has resulted in large part from its concern for integrity.

All Greyhound tracks are regulated by State or State sanctioned racing commissions. The staff of each commission oversee operations at the tracks for which they have responsibility. This supervision includes all aspects of racing and wagering activities. For example, constant monitoring occurs to prevent the unauthorized substitution of dogs, and urine samples are taken by State veterinarians to assure the absence of foreign substances. These steps, and many others, have proved necessary in order to maintain public confidence in the sport.

From long experience, AGTOA knows that it must be constantly alert against efforts by unsavory elements to infiltrate its tracks. The only way to make sure that no such subversion of appropriate standards occurs is to have strict State regulation. In the absence of constant detailed oversight, organized criminal elements would inevitably poison the system. Unregulated gambling whether at Greyhound tracks or elsewhere would create a clear and present danger. The consequence of a lack of tough-minded supervision would be the tarnishing of the sport in the mind of the public. Untoward events at a single track would adversely affect the industry as a whole.

AGTOA is very concerned over the prospect of unregulated Greyhound tracks being established on Indian reservations. In the fourteen States where its tracks are now operating, all but four have Indian groups within their boundaries and these four border on States with such groups. One does not have to be a career law enforcement officer to understand the attraction which such operations would have for criminal elements frustrated at their lack of success at regulated tracks. The substantial amounts of money involved would act as a magnet. Corruption of these operations would be the inevitable result.

As Deputy Assistant Attorney General Mark M. Richard testified before the House Committee on Interior and Insular

Affairs two years ago, high stakes gambling "involves a large number of fast moving cash transactions. The opportunities for 'skimming' and 'laundering' are enormous. Employees and managers can be corrupted into dishonest manipulations. Large-scale gambling operations require significant support services, such as security, food, cleaning, sanitation and transporation. Every one of these fringe operations can be lucrative and can attract racketeers who preserve their competitive edge by violence and imtimidation."

These problems are so severe that the Department of the Interior, as its Acting Solicitor Marian Blank Horn testified before that Committee last year, has concluded that "the States should be empowered to regulate hard core gambling on Indian land because (1) of the significant need for law enforcement oversight; and (2) of the significant additional law enforcement burden involved in federal regulation of a new area where the States are already regulating such gambling."

I want to make it clear that AGTOA does not oppose gambling on Indian reservations. Its position is that such gambling should be just as strictly controlled as off reservation gambling in the State where a reservation is located. This is the only way to make certain that gambling activity on Indian land is as free from criminal influence as possible. To have more than one set of rules applicable to gambling within a State is totally counter-productive from the law enforcement standpoint.

Commercial gambling is not a traditional Indian activity. As conducted on Indian reservations, it is not limited to Indian participants. The fact is that, to be economically viable, gaming on tribal lands must depend almost entirely on attracting non-Indians who are otherwise controlled by the laws of the State. There is no reason why the rules of the game for these non-Indians should be different depending on where in a State they do their gambling.

The controversy over the applicability of State laws to Indian reservations is being litigated on an on-going basis. On Monday of last week the Supreme Court of the United States postponed consideration of the question of jurisdiction until the hearing on the merits of an appeal by the State of California to which the Cabazon Band of Mission Indians and the Morongo Band of Mission Indians are parties. The principal issue in this case is whether California's gambling laws apply to the Cabazon and Morongo Bands on the basis of federal common law principles. The Ninth Circuit decided that they do not. However the Supreme Court disposes of the case, even if it does not decline jurisdiction, litigation will continue over the myriad issues surrounding gambling on tribal lands. In the meantime, the threat is real that gambling on reservations will continue to increase without appropriate regulation.

The result of this phenomenon will be the effective circumvention of State laws relating to gambling. Instead of consistent regulation within a State's boundaries, there will be enclaves where gaming will take place without the same strict regulatory standards being applied. Moreover, the effects of gambling activity on Indian reservations is not limited to tribal areas. The environmental and public safety impact of such operations will most certainly spill over onto surrounding non-Indian land. Thus, the States have a very substantial interest in seeing that the issue on which the legislation pending before this Committee focuses is effectively addressed. The controversy cries out for a legislative solution this year.

As AGTOA sees it, the basic question is not the necessity for hard-nosed supervision, which should be obvious to all concerned, but the identity of the regulator. To this end AGTOA urges that the solution embodied in H.R. 1920 be rejected. That bill represents the nose of a federal camel under the tent of State regulation as the name of its proposed National Gaming Commission clearly implies. Indeed H.R. 1920 actually "grandfathers" a handful of hard core gambling activities on Indian land while the regulatory issue is to be studied by the Comptroller General. AGTOA maintains that there is no need for a National Gaming Commission nor for any study by the Comptroller General.

By contrast, the IGARA would create an American Indian Bingo Commission. The idea of a national body to supervise bingo, traditionally an activity regulated at the local level in this country, makes little objective sense. AGTOA recognizes, however, that certain Indian tribes now sponsor bingo establishments which have some economic potential for those tribes because such activity has been shielded by some courts from local regulation. Whether that shield will be left in place by the Supreme Court remains to be seen should it decide the Cabazon/Morongo case on the merits. Therefore, if Congress wishes to protect these bingo operations it must adopt legislation which defines their federal status. One thing is certain that such establishments should not continue to operate essentially unregulated as they are at the present time.

As a legislative compromise the approach embodied in the IGARA, however questionable its logic, is understandable. At least the States generally do not have commissions regulating bingo. With respect to other types of gambling, however, State commissions are not only functioning but doing a good job. Consequently, if there is to be a federal role, it should be strictly limited to bingo as is the intent of the IGARA. Duplicative regulatory mechanisms at the State and federal levels would thereby be avoided.

The alternative, a national gaming commission with respect to gambling other than bingo on Indian reservations, entails the creation of a new, much larger federal agency. The establishment of such an agency, with the same powers as State gaming commissions and involving a substantial staff and budget, would be inefficient. The Regional Indian Gaming Commissions contemplated by S. 902 would simply proliferate the problems. There is absolutely no valid reason to create a parallel regulatory system, particularly in light of current budgetary constraints, when the States already have effective systems of gaming regulation operating within their boundaries.

The regulation of gambling in this country has traditionally been an area of responsibility assumed and performed by the States. Since not all States authorize gambling, in the geographic sense there is no need for a national gaming commission. Moreover, the regulation imposed by such a commission, whatever it might be, would inevitably conflict with existing regulation in every State where Indian reservations are located. The reason is that each State has its own supervisory scheme developed out of its own specific regulatory experience. As previously indicated, such conflict would tend to weaken the overall law enforcement effort.

AGTOA believes that the most appropriate resolution of this issue is to use as precedent 18 U.S.C. § 1166 which relates to the regulation of Indian liquor transactions. This statute provides that certain pre-existing provisions of federal law shall not apply "to any act or transaction within any area of Indian country provided such act or transaction is in conformity both with the laws of the State in which such act or transaction occurs and with an ordinance duly adopted by the tribe having jurisdiction over such area of Indian country, certified by the Secretary of the Interior, and published in the Federal Register." Section 1161 was recently construed by the Supreme Court in Rice v. Rehner, 463 U.S. 713, 103 S. Ct. 3291 (1983).

In that case the Court found that "Congress intended to delegate a portion of its authority to the tribes as well as to the States, so as to fill the void which would be created by the absence of the discriminatory federal prohibition. Congress did not intend to make tribal members 'super citizens' who could trade in a traditionally regulated substance free from all but self-imposed regulations. . . . Application of the State licensing scheme does not 'impair a right granted or reserved by federal law'". 103 S. Ct. at 3303. The reference to "discriminatory federal prohibition" relates to the fact that traditionally Indians did not enjoy "tribal self-government insofar as liquor transactions were concerned." Id. Similarly, there is no such tradition as to commercial gambling not because of federal prohibition but because such gambling is a new phenomenon on Indian reservations.

Historically in this country public debate with respect to legalization of gambling has been a matter for resolution at State and local level. The same has been true, with one lamentable episode, with respect to liquor. As to the latter, because of the referenced episode, State authority is now expressly recognized in the Constitution. Out of sometimes bitter experience, we as a people have concluded that the diversity of attitude towards liquor is such that a national regulatory scheme is not practical.

Although that perception with respect to gambling has not been elevated to constitutional dignity, our political conclusion as citizens has been to the same effect. A State's laws and regulations relating to gambling represent a consensus of views as to standards of conduct allowable in that State as a whole. They are reflective of current public opinion and are enforced by public scrutiny. Based on our national experience, this is as it should be.

In an effort to clarify the meaning of the IGARA, AGTOA suggests that wherever the word "gaming" appears in Section 307(c)(4) the word "bingo" be substituted in its place. The word "tribal" should be inserted before the word "applicant" the first time the latter word appears in Section 309(b). The phrase "purely ceremonial or social gambling" as it appears in § 1166(c) of Section 401 requires further elaboration to prevent abuse. In this regard, AGTOA urges that the definition of "Class I Gaming" set forth in Section 19 of H.R. 1920 be used as a point of departure. Finally, in order to alleviate the concerns which have been expressed by some Indian tribes that they might not be treated fairly by State gaming commissions, AGTOA recommends that the following language be added to § 1166(a) of Section 401, after deleting the period after the word "state": "and in the application of such laws involving gambling no state shall deny equal protection of the law to Indians within its jurisdiction."

What the IGARA is proposing, with the exception of its treatment of bingo, is squarely in accord with the recommendations of the Report of the Commission on the Review of the National Policy Toward Gambling ("Report") in 1976, the last time this country's policy toward gambling was reviewed in depth. The Commission concluded that it did "not believe that the Federal Government, which represents the Nation as a whole, should substitute its judgment for that of the individual States in this area." Report at 5. Specifically, in discussing gambling on Indian reservations, the Commission stated: "In withdrawing Federal control, Congress can cause jurisdiction over the reservations to be delegated to the States and, in fact, has taken steps in that direction, by passage of Public Law 83-280. . . . While this statute was passed with an eye toward eventual termination of Federal supervision in this area, it also made clear that such termination was to be effected gradually." Report at 21. In light of the passage of time, adoption by this Congress of the IGARA will conform with that intent.

In 1976, there was only one federal statute which specifically prohibited an activity relating to gambling on Indian reservations. This statute, 15 U.S.C. § 1175, made it unlawful to "manufacture, recondition, repair, sell, transport, possess or use any gambling device . . . within Indian country. . . ." The Commission recommended that this prohibition be repealed because "[t]o do so would then place all gambling activities under the control of applicable State law." Report at 22. The Commission went on to urge that "legal gambling activity of any kind conducted on an Indian reservation pursuant to State law should be subject to the same rate of taxation as that same activity conducted elsewhere in the State. That activity would presumably be subject to the same licensing and regulatory requirements whether conducted on or off a reservation. Therefore, the licensing privilege should be accompanied by the correlative duty of equal taxation." Report at 22. AGTOA respectfully submits that nothing has occurred during the last decade which alters the validity of the Commission's findings in this regard.

Thank you, Mr. Chairman, for the opportunity to appear and present AGTOA's views on this important subject.

Prepared
Statement of
Jay Sparrier
President-Elect
The National Association of State Racing Commissioners

Introduction

Wherever there is legal pari-mutuel gambling in North America, such gambling is overseen and regulated by a state-appointed racing commission, nearly all of which are members of the National Association of State Racing Commissioners (NASRC).

The Association's membership includes the border provinces of Canada, all but one of the racing commissions in the United States, Puerto Rico, the Bahamas, and Jamaica.

The Association was formed in 1934 to "encourage forceful and honest nationwide control of racing for the protection of the public." Among the conditions of membership, as defined in the Association's constitution and bylaws, is acceptance of the principle of reciprocity--enforcement of each other's official rulings (penalties). In a very real sense, reciprocity is the glue that holds the NASRC together, for to live outside of its cover would make any jurisdiction easy prey of rule-breakers and other undesirables.

The NASRC serves as a repository and redistribution center for all rulings, and although the Association provides many other services to its membership--monthly summaries of significant decisions of state and federal courts, an annual volume of pari-mutuel statistics with summaries of state taxing methods, development and promotion of uniform rules of racing--the prompt and efficient distribution of rulings is the most important of all its functions.

The Racing Commissions

Without exception, all state racing laws provide for a racing commission, and all endow them with the power to make rules and regulations, to license race tracks, to oversee the distribution of revenue, and to preserve public safety and security. All commissions are empowered to license the participants in racing (owners, trainers, jockeys and drivers, all those who work at the tracks), to enforce observance of the rules, to hold hearings, summon witnesses, and elicit testimony.

From the preamble of a model statute drafted for the NASRC by the late John O. Humphreys, a practicing attorney and author from Indiana, and Wendell Bayse, a professor of law at the University of Oregon:

> It is the policy of the state in furtherance of its responsibility to provide revenues for the operation of state government for its people, to encourage forceful and honest statewide control of horse racing for the public health, safety, and welfare by safeguarding the people of this state against corrupt, incompetent, dishonest, and unprincipled horse racing practices:
>
> (a) To institute and to encourage and permit development of the business of horse racing with pari-mutuel wagering thereon on a high plane.
>
> (b) To institute and maintain a program to encourage and permit development of the breeding and ownership of race horses in the state.
>
> (c) To institute and maintain a regulatory program for the business of racing horses, which program assures the protection of public health, safety, and welfare, vesting with the commission forceful statewide control

> of horse racing with full powers to prescribe rules and regulations and conditions under which all horse racing is conducted ....

To enforce the mandate given them by state law, the 40 racing commissions in the United States alone last year spent nearly $50 million (for administrative staff, field investigators, auditors, legal counsel, and so forth) and another $20 million for drug-testing and research. Our own most recent research estimates that the race tracks themselves spent $9 million for backstretch security alone, making a total annual expenditure of nearly $80 million to ensure against corrupt practices in the racing industry.

No other professional sport is so scrupulously regulated.

Gambling on Indian Lands

It is this Association's strong position that state regulation of the pari-mutuel sports be extended to racing on Indian lands. It is our position that to do otherwise would put in jeopardy both the integrity of the sports and the sizable government revenue that flows from them.

This position, long held by the racing commissioners, was reenforced as recently as this past April, when racing commissioners in convention in Lexington passed a resolution without dissent endorsing this important principle.

Just as strongly, we emphasize that this policy it not to be construed as opposing the expansion of horse and greyhound racing to Indian lands. We ask only that such racing as may be contemplated on Indian lands be subject to the rules and regulations that prevail in the state in which such gambling occurs.

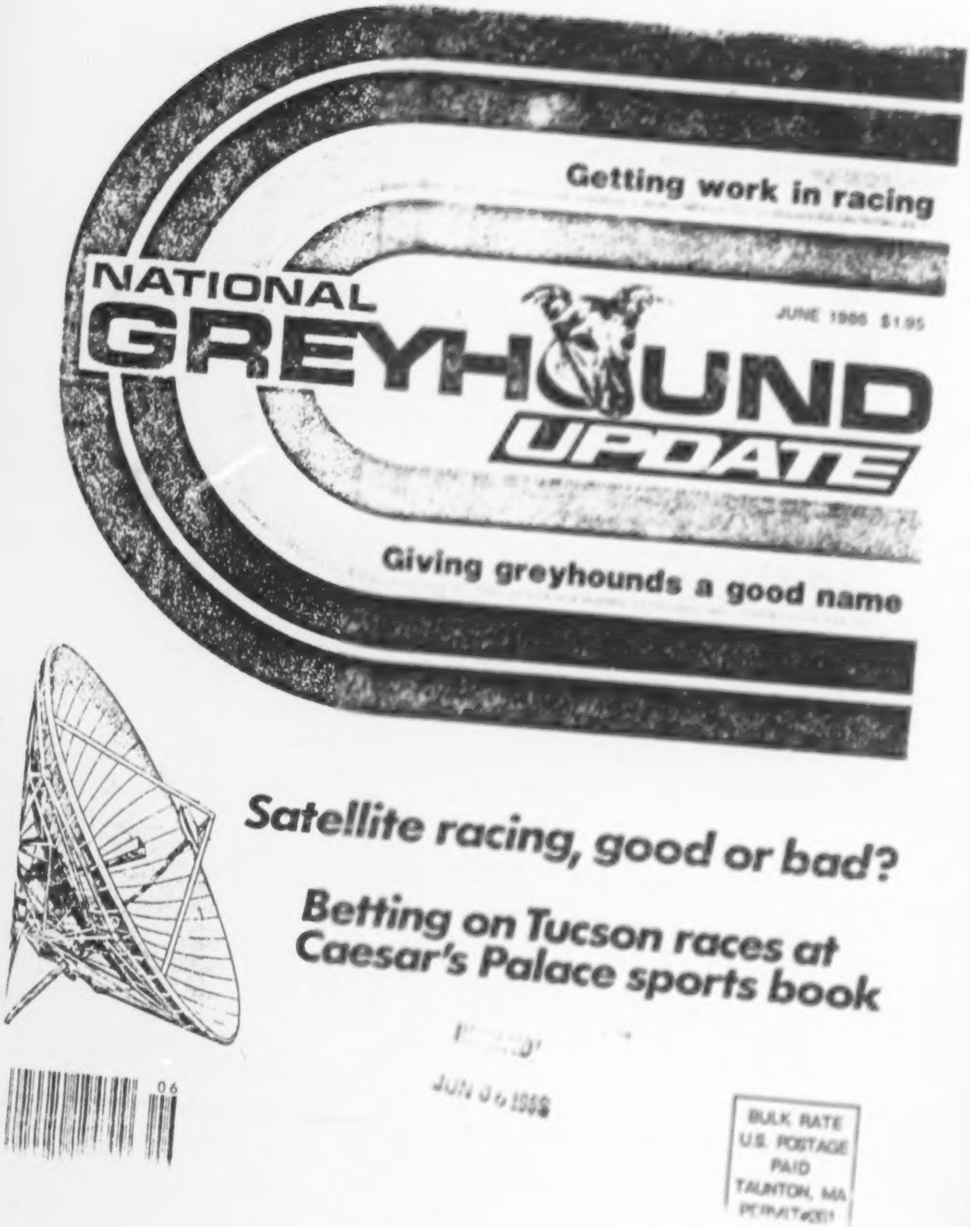
The operation of racing facilities outside of the strict regulatory control of the states would disadvantage the Indian tribes quite as much as the racing industry and the public it serves. Without question, the presense of such loosely supervised, cash-intensive enterprises would be an irresistible lure to the criminal elements among us.

As an example I quote from a recent Oklahoma Supreme Court decision upholding the Oklahoma Horse Racing Commission's refusal of an operating permit for promoters calling themselves Oklahoma Park, Inc.

> The Commission contends that its finding that the appellee's proposed financial package lacked the requisite integrity was clearly supported by substantial evidence. We agree.
>
> Among the most relevant and significant facts shown by the record are these. Applicant, Oklahoma Park, Inc., was a newly formed Oklahoma corporation with a total paid-in capital of $1,001.00. The officers of the corporation are John F. Wolcott, Sr., of Shreveport, Louisiana, and Laurence W. Ritter and Gladys Ritter, both of Los Angeles, California. The proposal involved 120 per cent financing. A $46,000,000 track was to be financed by a $57,000,000 loan which was to be obtained through the efforts of an employee of a foreign company located in England, Arab International Trust Company, Ltd. This company would receive the actual funds from another foreign company incorporated in the Cayman Islands. The individual investors could not be identified and the actual cash would come from secret, numbered bank accounts. The documents presented to the Commission did not constitute a binding loan agreement. The loan package was put together in major part by a convicted felon, whom the unrefuted record shows to be a nationally known organized crime figure. This organized crime figure had extensive contacts with the applicant, and it was he who brought all the parties together. In addition to having unknown lenders, the only identified insurer of the project was represented by the felon.

It is for the protection of the Indian tribes themselves that we strongly advise that racing on Indian lands be subject to the same rules and regulations that prevail at race tracks elsewhere in the state.

The National Association of State Racing Commissioners is grateful for being offered the opportunity to present its views.



Getting work in racing

NATIONAL
GREYHOUND
UPDATE

JUNE 1986 $1.95

Giving greyhounds a good name

Satellite racing, good or bad?

Betting on Tucson races at Caesar's Palace sports book

JUN 06 1986

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Credit AGTOA on Indian Issue

for a record breaking fifth stakes victory.

Despite the scratch in the Derby, Keefer still earned over $72,000 for the Keith Dillon Kennel in 1988, with a winning percentage of .793 for his twenty nine starts. Only once did Keefer fail to earn a check for his owners, a fifth place finish in the Matinee Idol Sprint championship. Four thirds and one fourth completed his record. In addition, Keefer set meet records for both the sprint (30.58) and 3/8th mile (37.21) distances.

An appropriate final note: after the announcement that he would miss the rest of the Derby Lane season, Keefer did make one last return to the track – for a triumphant walk on. And he did it with the usual Keefer style.

He limped into the paddock. But once on the track, as the announcer read the roll of his accomplishments, and the crowd roared its appreciation, the charismatic champion tugged at his leash, bounded about, and playfully jumped up on Schulthess, as though begging to be allowed to race one more time. Only after trainer and greyhound departed the racing oval did the mighty Keefer begin to limp again.

NO INDIAN RACING FOR NOW

Credit American Greyhound Track Operators Assn. for leading the way for flat and harness racing in putting a long hold on Indians building race tracks on their reservations.

Legislation passed by the House prohibits pari-mutuel wagering on Indian reservations for 4 years, allowing Congress time to study the situation. It was probably the first time AGTOA had such real impact on federal legislation.

Said very pleased Executive Director George D. Johnson, Jr., who deserves much credit for masterminding the fight strategy: "We're halfway through a winning battle."

BUT NGA VIEW NOT THE SAME

American Greyhound Track Operators Association (AGTOA) and National Greyhound Association (NGA) very often do no see things the same way. They were not headed in the same direction on the Indian legislation.

NGA took an opposite position at the National Association of State Racing Commissioners meeting in mid-April. The Greyhound committee of the NASRC voted to support States jurisdiction over all pari-mutuel operations within their borders, including those in Indian lands. The resolve was supported, 5 to 1, by the committee, National Greyhound's one representative casting the no vote.

The following minority report, showing support for Indian reservation tracks, was presented by Gary Guccione, NGA Secretary-Treasurer:

"It is the overwhelming sentiment of the members of the National Greyhound Association—the greyhound owners and breeders in the sport—to support the expansion of greyhound racing into new jurisdictions. This would include proposals to build greyhound tracks on Indian reservations.

"We are in total agreement that any such racing on Indian land needs to be carefully monitored and regulated. It is not unreasonable to assume that an arm of a properly established federal regulatory agency could insure that end. New racing jurisdictions each year, whether state or county, carry out these responsibilities, and it seems realistic that personnel in a federal agency could just as easily learn the procedure.

"Because of this, we cannot support this particular resolution."

Thus AGTOA and NGA were in obvious disagreement again.

But not on every item that came before the racing commissioners.

The NGA and AGTOA representatives both voted FOR the following resolution:

"Be it resolved that the NASRC encourages the National Greyhound Association (NGA) and the American Greyhound Track Operators Association (AGTOA) enter into a jointly funded program for the betterment of the welfare of the racing greyhound and that this program include the humane disposition of greyhounds and training programs for trainers, kennel helpers and other licensees who deal directly with greyhounds."

The agreement on this resolution does not necessarily mean that there will be accord on where the betterment goes from here. As we went to press there had been no funding of the program by NGA.

THE POWER OF THE PRESS

Last month we made a pitch for women judges following Cliff Sundberg's story about Trainer Marlene Johnson wanting to become one.

This month we received this letter from Marlene:

LADY JUDGE HIRED

Yes, Indeed —— Here (does) come the judge!!!!

Want to keep you updated after the profile you

-Turn please

PREPARED
STATEMENT OF

DONALD R. ANTONE, SR.
GOVERNOR
GILA RIVER INDIAN COMMUNITY

Senator Andrews, Members of the Select Committee, Staff Members, and fellow Indian Leaders, I thank you for this opportunity to appear before this Committee to present the views of the Gila River Indian Community regarding an Indian Gaming Regulatory Act. I am the Governor of the Community and our main offices are located in Sacaton, Arizona. The Community is composed of the Pima and Maricopa Indian Tribes and our Reservation is located in South-Central Arizona. Our northern border is adjacent to the greater Phoenix Metropolitan Area which has a population of over 2 million people.

This Committee should be aware that our Tribe is located in a "gambling" State. Pari-mutuel wagering on horses, dogs, and harness racing is a thriving and lucrative industry in Arizona. During the period from 1980 through 1984, over a billion dollars was spent on pari-mutuel wagering on dogs and horses. The State of Arizona one of the largest "numbers" games (lottery) in the United States. From July 1, 1981, through August 31, 1985, $336,581,287 was wagered in the lottery. In Arizona $41,228,500 was wagered in state regulated Bingo games during 1984 and 1985. Pari-mutuel wagering as proposed by Gila River is opposed because of the potential economic threat to the gaming industry and other Arizona interests.

However, H.R. 1920 now before this Committee, in its present form, is extremely harmful to the gaming activities of my Tribe. On December 18, 1985, the Community entered into contracts with a management company for the purpose of conducting pari-mutuel activities on our Reservation. The agreements were subsequently approved by the Phoenix Area Director on January 21, 1985, and this approval was specifically concurred in by the then Acting Assistant Secretary of the Interior John Fritz, by letter to the Attorney General of Arizona on April 12, 1985. A declaratory action was then filed by the Community in April, 1985, in the United States District Court of Arizona to obtain a judgment regarding the legality of pari-mutuel activites on the Gila River Indian Reservation.

In a letter dated January 2, 1986, just before arguments were to be heard by the District Court in Phoenix, Ross Swimmer, the Assistant Secretary of the Interior, notified the Community that he was "withdrawing" approval of the agreements approved by a prior administration. The adverse effect on the Community's case is obvious. The Assistant Secretary took an extremely broad view of his authority because there was and is no statutory basis for his action absent a breach by any party. In any event, the case has been briefed, argued and submitted to the District Court.

The benefits to the Community of operating a pari-mutuel operation are clear. The Community's share of the economic benefits may be summarized as follows:

1. Seven percent of the monies bet: initial estimates range from three to seven million dollars a year.

2. Lease rentals in the amount of $9,000 per acre for 33 acres.

3. Employment for 150 members.

4. Construction of a building (fronton) at no cost to the Community. The building will be valued at 15 million dollars and will be owned by the Community when ready for occupancy.

5. Physical improvements to the immediate area to facilite other Community economic development efforts by payment for the installation of power and water connections, improvements to roads and development of a transportation plan, and access to waste treatment facilities.

6. Stimulus to economic development in a prime area previously designated fcr light industry and recreation.

7. One per cent of the gross revenue will be placed in an educational and cultural heritage fund.

The Community supports enactment of federal legislation strictly regulating gaming activites on Indian Reservations. However, the Community strongly opposes enactment of any measure which prohibits Class III gaming. For instance H.R. 1920 states as follows in Section 3. (c) the following:

> (1) Except as provided in paragraph (2) of this subsection, during the four-year period beginning on the date of enactment of this Act, Class III gaming shall be unlawful on any Indian lands.
>
> (2) Within sixty days of the date of enactment of this Act, the Secretary shall identify and prepare a list of each separate Class III gaming activity actually operated on Indian lands as of January 1, 1986, and shall

> publish such list in the Federal Register. Such Class III gaming activities, if otherwise legal under existing law and so long as they remain within the same nature and scope, shall not be subject to the provisions of paragraph (1) of this subsection. [Emphasis added]

The Community opposes the declaration that Class III gaming is unlawful on Indian lands as being both unfair and not in accord with the holding, meaning, and spirit of reported decisions. As stated previously we are awaiting a decision on this precise issue from a United States District Court and for the Senate to make this decision, without regard to applicable decisions, is both unfair and unwise.

The Community is further concerned that the requirement that a Class III activity be "actually operated" before being "grandfathered" in also is unfair. Although the Community has not begun substantial construction, the fact that we once had approved agreements, and in good faith sought a declaration from a federal court, should be specifically recognized by this body and Gila River should be allowed to operate it jai alai fronton with pari-mutuel wagering under applicable regulations developed by the National Indian Gaming Commission.

The Community strongly opposes any attempt by Congress to allow any gaming by Indian Tribes to be regulated by state authorities. It is our understanding that the Department of Justice and the Department of the Interior support the concept of state regulation of Indian gaming. I cannot think of a more disasterous move by the Congress. Tribes throughout history have zealously and vigorously protected their sovereign status. This status has been recognized many times by this body and the courts. To allow state intervention and regulatory authority on Indian Reservations and over Indian activities clearly interferes not only with the sovereignty of Indian Tribes but also with the trust responsibility the United States owes to Indians.

The current state of the case law which has developed among the federal courts should be incorporated into this legislation. Indian gaming legislation should not be based on the fear of economic competition expressed by the various non-Indian gaming interests. To upset the delicate and precarious jurisdictional and economic balance which has developed since the United States Constitution was first drafted would be a monumental catastrophe.

The four year moratorium imposed by H.R. 1920 is not necessary. Every interested State and State gaming control or regulatory body has had the opportunity to present its views. Certainly the State of Arizona has testified. We have presented the benefits of conducting pari-mutuel wagering and problems which may arise will be addressed by the National Indian Gaming Commission. This body, very appropriately, has the authority and will soon have the expertise to deal with such problems. In the special area of Indian gaming the federal government must regulate these activities. Therefore, the procedures set forth in Section 21 of H.R. 1920 simply are not necessary.

In the event that the Gaming Commission feels that its expertise is not sufficient there is no reason why the Community could not contract with the Arizona Racing Commission for all or a substantial portion of its regulatory services. Furthermore, this would eliminated the perceived problem that organized crime could gain a foothold even in the face of the extensive federal enforcement services now in effect on Indian Reservations.

In conclusion, on behalf of the Community, I urge that H.R. 1920 not be enacted into law in its present for. Class III gaming must be treated in the manner I have suggested. To do otherwise would greatly infringe on the sovereign status of Indian Tribes and unfairly and retroactively handicap the ability of the Community to obtain much need revenue by consumating a revenue-producing economic venture which would provide many benefits to the Community.

[illegible]

[illegible]

ADMINISTRATIVE OFFICES
P.O. Box [illegible]

January 7, 1986

Mr. Ross Swimmer
United States Department of the Interior
Assistant Secretary - Indian Affairs
19th and C Street, N.W.
Room 4160
Washington, D.C. 20245

RE: Gila River Indian Community

Dear Mr. Swimmer,

This is to advise you that the Gila River Indian Community, in the strongest possible terms, objects to the extraordinary action contained in your letter of January 2, 1986, attempting to withdraw approval of agreements regarding pari-mutuel wagering on the Gila River Indian Reservation. I am very surprised by your action but the fact that you gave me no prior notice of your decision or the opportunity for prior comment is even more disturbing. If dictatorial rule from Washington D.C. is the new method of administration, Tribes face even more difficult times than previously thought.

The "withdrawal" action places an enormous economic hardship on the Community. We, as has the developer, have expended a substantial amount of funds, time, and effort, in specific reliance on the approval by the Phoenix Area Director of the agreements. Furthermore, the Area Director's approval was specifically concurred in by the previous Deputy Assistant Secretary for Indian Affairs in 1985. Unlike the great financial institutions, we cannot easily "write-off" these expenses.

This matter has been referred to our General Counsel since I do question the legal basis for your "withdrawal" authority. The agreements were specifically approved pursuant to 25 U.S.C. §§81 and 415, and therefore it seems to me that there is no sound legal basis for your action.

Your action seriously impairs the ability of all Indian Tribes and [illegible] into business agreements with non-Indian business interests and which are subject to federal approval. This new "withdrawal of approval" authority you now claim places in jeopardy all Bureau of Indian Affairs approved leases, agreements, ordinances, and other documents. In fact, it appears to me that this policy represents a return to the rejected paternalistic policy which prevailed in Indian Country prior to enactment of the Indian Reorganization Act in 1934. Your arbitrary and capricious action unilaterally terminating our contractual relationship with C.A.R.E. clearly undermines and subverts the Community's economic development plans. But, more importantly your action is solid evidence how the business climate on Indian Reservations could be perceived as unstable, subject to the whims of a federal official, ultimately discouraging investments on Indian Reservations. I hereby request that you rescind your action of January 2, 1986, and withdraw your letter.

I am sure you are aware that the precise issues you raise in your letter are now before the United States District Court of Arizona in the case entitled Gila River Indian Community v. Robert K. Corbin, No. CIV 85-1032 PHX EHC. Your actions not only interferes with our business interests but also adveresely affects our legal position in federal court. This action by the guardian of the Tribe's interest is a clear violation of the trust responsibilty owed to Pimas and Maricopas by the United States of America. The Community's Motion for Summary Judgment will be argued on January 27, 1986, in Phoenix, Arizona. We fully intend to pursue this court action to judgment but the inconsistent action of the Department of the Interior in first approving our pari-mutuel wagering enterprise and then "withdrawing" approval will be presented to the court for consideration.

Finally, your position as set forth in your letter of January 2, 1986, is based on inaccurate facts. Specifically, the correct facts are:

1. Pari-mutual wagering is not prohibited by the criminal laws of the State of Arizona.

2. The Assimilative Crimes Act, 18 U.S.C. § 13 is not violated by the Community's pari-mutuel wagering enterprises.

3. The legal issues raised in our case are not identical to the Santa Ana Pueblo case. There is substantial difference between the state laws of New Mexico and Arizona.

4. H.R. 1920 as reported by the House Interior Committee on December 11, 1985, does not prohibit pari-mutuel wagering on Indian Reservations.

5. The pari-mutuel wagering program is economically viable.

I request that I be given the opportunity to express my views to you in a face-to-face meeting at your earliest opportunity.

Sincerely yours,

GILA RIVER INDIAN COMMUNITY

Donald R. Antone, Sr.
Governor,

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

JAN 2 1986

JAN 1986
RECEIVED
GILA RIVER INDIAN
COMMUNITY

Honorable Donald R. Antone, Sr.
Governor, Gila River Indian
  Community
P.O. Box 97
Sacaton, Arizona 85247

Dear Governor Antone:

I am writing to inform you of my decision to withdraw approval of the lease, management agreement and development agreement between the Gila River Indian Community and C.A.H.K., Inc., relating to a pari-mutuel jai alai enterprise. These documents were approved by the Phoenix Area Director on January 21, 1985.

I am greatly concerned that the Gila River Community may have construed the Area Director's approval as concurrence by the Department in the view that the proposed jai alai operation would fall outside the scope of the criminal prohibitory laws of the State of Arizona. In fact, it is our view that pari-mutuel jai alai is prohibited by the laws of Arizona. As you are undoubtedly aware, the Secretary wrote to the Governor of the Santa Ana Pueblo on August 6, 1985, about the Pueblo's proposed pari-mutuel dog racing enterprise. I enclose a copy of that letter, in which the Secretary expressed his view that the Pueblo's proposed enterprise would violate the Assimilative Crimes Act, 18 U.S.C. § 13, because the activity is prohibited by the criminal laws of New Mexico. The legal issues raised by the Gila River Community's proposal are substantially identical to those raised by the Santa Ana Pueblo's proposal, and therefore the analysis contained in the Secretary's letter is applicable here as well. Moreover, the Attorney General of Arizona has taken the position that pari-mutuel jai alai is prohibited by the laws of Arizona. The policy of deference to State Attorney General interpretations of state gambling laws which was announced in the Secretary's August 6 letter is therefore applicable here.

I am also concerned that the Gila River Community may be proceeding with an enterprise that almost certainly would be prohibited under any gambling regulatory legislation which may be enacted by Congress. The Department of the Interior and the Department of Justice have recommended to Congress that Indian gambling operations other than bingo (and social and ceremonial gambling) be subjected to state regulation. We have advised

Congress that we affirmatively support bingo as an economic opportunity for tribes but that we view the potential law enforcement problems surrounding other forms of gambling as serious enough to outweigh the economic benefits to tribes. H.R. 1920, as ordered reported by the House Interior Committee on December 11, although it does not adopt the Administration recommendation favoring state regulation of non-bingo gambling, does provide that a National Indian Gaming Commission would regulate this kind of gambling in a manner identical to that of the states. Under this bill, as under the Administration proposal, pari-mutuel jai alai would not be permitted on Indian reservations in Arizona. I believe it is extremely unlikely that Congress will enact a bill with provisions for non-bingo gambling which are less stringent than those contained in the bill reported by the House Interior Committee. Because it is my view that the Gila River Community's proposed jai alai enterprise is prohibited under current law by the Assimilative Crimes Act and would also be prohibited by any gambling regulatory legislation which Congress may enact, I feel constrained to withdraw the Area Director's approval in order to remove any public perception that this Department may believe that the proposed enterprise would be in conformity with federal law and in order to encourage the Community to abandon its non-viable jai alai enterprise and redirect its energy and resources toward other projects which have some prospect of success.

I regret any inconvenience which the Department's past and present actions may cause the Community. If I may be of any assistance in helping the Community make alternate plans, please let me know.

Sincerely,

Assistant Secretary--
Indian Affairs

Enclosure

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Attorneys for Plaintiff Gila River Indian Community

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

GILA RIVER INDIAN COMMUNITY, Plaintiff, vs. ROBERT K. CORBIN, Defendant.	CIV 85-1032 PHX EHC (CONSOLIDATED)
C.A.H.K., INC., et al, Plaintiff, vs. ROBERT K. CORBIN, Defendant.	CIV 85-1037 PHX EHC RULE 11(i) STATEMENT OF FACTS

Plaintiff, Gila River Indian Community, by their counsel undersigned, pursuant to Rule 11(i) of the rules of Practice of the United States District Court for the District of Arizona, hereby subnits the following facts in support of their Motion for Summary Judgment filed herein.

* * *

RESPECTFULLY SUBMITTED this 5th day of November, 1985.

Rod B. Lewis

Rodney B. Lewis
Michael P. Upshaw
Attorneys At Law
P. O. Box 400
Sacaton, AZ 85247
(602) 562-3611, 3311

FACTS

Plaintiff, Gila River Indian Community ("Community") submits the following facts in support of its Motion for Summary Judgment filed herein.

1. The Community is an organized tribe of Indians federally recognized pursuant to 25 U.S.C. § 476 with a constitution and bylaws approved by the Secretary of the Interior pursuant to the laws of the United States. Defendant's Answer Paragraph 6.
2. The Community is the beneficial owner of and governs a reservation which contains approximately 372,022 acres within Maricopa and Pinal Counties, Arizona, and that this reservation is within part of the aboriginal lands held by the Pimas and Maricopas at the time the Gila River Indian Reservation was established by act of February 28, 1859, 11 Stat. 401. Defendant's Answer, Paragraph 7; Affidavit of Donald R. Antone, Sr, Paragraph 1.
3. The Community's reservation is located in a desert area and its economy is primarily based on agriculture. The reservation has no timber, wildlife or fish, oil or coal to utilize to create revenue for the operation of its government or the provisions of services to members. Affidavit of Donald R. Antone, Sr., paragraph 2.
4. The Community delivers governmental services to residents of the Gila River Indian Reservation which has approximately 9,650 enrolled members, of which approximately 7,425 reside on the reservation. Affidavit of Donald R. Antone, Sr., paragraph 3.

* * *

5. The Community's unemployment level on the reservation is in excess of thirty percent (30%). Affidavit of Donald R. Antone, Sr., paragraph 4.

6. The Community is a tribal government which delivers governmental services to residents of the Gila River Indian Reservation. Affidavit of Donald R. Antone, Sr., paragraph 3, Defendant's Answer, paragraph 7.

7. In December, 1984, the Community and Plaintiff C.A.H.K. ("C.A.H.K.") a Florida corporation authorized to do business within the State of Arizona, entered into a lease, development agreement and management agreement ("Agreements") wherein C.A.H.K. agreed to develop and operate a jai alai fronton on the Gila River Indian Reservation in exchange for a management fee. True and correct copies of the Agreements are attached as Exhibit B to the Affidavit of Donald R. Antone, Sr. Defendant's Answer, paragraph 8, 10; Affidavit of Donald R. Antone, Sr., paragraph 5.

8. Pursuant to the Agreements, operation of the jai alai fronton will include pari-mutuel wagering on the jai alai contests and events as part of the entertainment offered. Defendant's Answer, paragraph 1; Affidavit of Donald R. Antone, Sr., paragraph 6.

9. Pursuant to the Agreements, the Community is to receive a substantial portion of the profits from the operation of the jai alai fronton. These proceeds are to be applied for the purposes of promoting the health, education and welfare of the members of the Community. Affidavit of Donald R. Antone, Sr., paragraph 7.

10. Pursuant to the Agreements, operation of the jai alai fronton will create a substantial number of jobs within the Community. Members of the Community will receive preference in filling these newly created employment positions. Affidavit of Donald R. Antone, Sr., paragraph 8.

11. Pursuant to the Agreements, C.A.H.K. is to bear the full cost and expense of construction, development and ongoing operation of the jai alai fronton. Defendant's Answer, paragraph 13; Affidavit of Donald R. Antone, Sr., paragraph 9.

12. Pursuant to the Agreements, the fronton and the business conducted therein, including jai alai activities and pari-mutuel wagering, will be owned by the Community upon completion of the fronton. Defendant's Answer, paragraph 8; Affidavit of Donald R. Antone, Sr., paragraph 10.

13. The Pimas and Maricopas, the Indian Tribes comprising the Gila River Indian Community, have traditionally and historically engaged in wagering activities prior to the establishment of the current governmental system based on the United States Constitution. Affidavit of Donald R. Antone, Sr., paragraph 11.

14. On January 21, 1985, the Agreements were approved by James H. Stevens, the Phoenix Area Director for the Bureau of Indian Affairs of the United States Department of the Interior. Defendant's Answer, paragraph 16; Affidavit of Donald R. Antone, Sr., paragraph 12.

15. On April 3, 1985, the tribal council of the Gila River Indian Community, the Community's governing body, adopted a tribal ordinance creating a tribal gaming commission and authorizing

and regulating pari-mutuel wagering within the Gila River Indian Reservation. This ordinance encompasses and regulates pari-mutuel wagering with respect to the playing of jai alai within the Reservation. A true and correct copy of the Ordinance is attached as Exhibit C to the Affidavit of Donald R. Antone, Sr., Affidavit of Donald R. Antone, Sr., paragraph 13.

16. In a letter dated April 12, 1985, John W. Fritz, Deputy Assistant for Indian Affairs sent the Honorable Bob Corbin a letter which stated that the lease between the Gila River Indian Community and C.A.H.K would not be cancelled by the Secretary of the Interior by stating, ". . . he has no authority to rescind approval of a lease, once that approval is final, and any any attempt to do so is likely to be viewed as an attempted Fifth Amendment taking," and further, "The Area Director's approval of the Gila River documents was given with my concurrence. It is my view that, because of the potential economic benefit of the project to the Gila River Tribe, the tribe should have the opportunity to test the legality of its proposal in court." A copy of the Letter of John Fritz, dated April 12, 1985, is attached as Exhibit A.

17. Defendant Corbin is a party herein by virtue of his official capacity as Attorney General for the State of Arizona. As such, Defendant Corbin is charged by statute with the supervision and management of the prosecution and enforcement of Arizona law within the State of Arizona. Defendant Corbin, in his capacity as Attorney General for the State of Arizona, is authorized to enforce compliance with Arizona law

pertaining to gambling and to criminally prosecute any violation of such laws. Defendant's Answer, paragraph 9.

18. In December, 1984, and early 1985, Defendant Corbin, in response to the Agreements and course of conduct between the Community and the C.A.H.K., repeatedly expressed his position that operation of a facility permitting pari-mutuel wagering on jai alai contests within the Gila River Indian Reservation would constitute a violation of Arizona's criminal statutes pertaining to gambling as to the C.A.H.K. Plaintiffs. Defendant's Answer, paragraph 18; and that plaintiff Tribe's conduct with respect to gaming is illegal under federal law, paragraph 33.

19. The State of Arizona by statute permits pari-mutuel wagering on horse harness racing, horse racing and greyhound racing activities as an exception to the state criminal statutes pertaining to gambling. All horse harness racing, horse racing and greyhound racing activities within the state are regulated by the Arizona Racing Commission. Such pari-mutuel wagering activities are permitted for profit-making businesses. Defendant's Answer, paragraph 19.

20. The State of Arizona by statute permits and regulates the operation of games of bingo. Games of bingo within the state are regulated by the Arizona Department of Revenue. Defendant's Answer, paragraph 20.

21. The State of Arizona by statute authorizes and conducts a state-run lottery. The lottery is operated by the Arizona state lottery commission. The commission contracts with outside management companies to print and distribute tickets

and in all other respects run the lottery. Defendant's Answer, paragraph 20.

RESPECTFULLY SUBMITTED this 5th day of November, 1985.

Rod B. Lewis

Rodney B. Lewis
Michael P. Upshaw
Attorneys At Law
P. O. Box 400
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(602) 562-3611, 3311

Copy of the foregoing
mailed this 5th day of
November, 1985, to:

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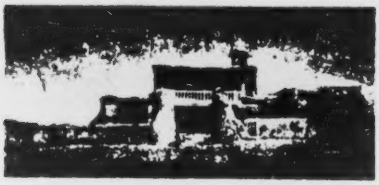

PREPARED STATEMENT OF ROY MONTOYA

My name is Roy Montoya, Tribal Administrator for the Pueblo of Santa Ana. I have been designated by the Pueblo Council to appear before you and present testimony concerning S. 902 and HR 1920, legislation pending to establish federal standards and regulations on the conduct of gambling activities on Indian reservations. This legislation is very important to the Pueblo of Santa Ana as it may affect our ability to develop Tribal trust lands as determined by the Pueblo Council and may affect the outcome of pending litigation before the Federal District Court for the District of Columbia.

Our previous testimony before this committee on June 18, 1985 set forth our general concerns, information regarding the Pueblo of Santa Ana, and our view of the bills pending at that time. Since then, the House has passed HR 1920 as amended which includes a moratorium that would keep the Pueblo from developing its land and resources in a manner that has already been determined by the Pueblo Council and in accordance with existing ordinances of the Pueblo. We find the moratorium to be totally contrary to the existing policies of Indian self-determination and Tribal self-government espoused by the Reagan Administration and this Congress. It is about this concern that I wish to address you today. In addition, I want to make positive recommendations for reasonable regulation of Class III gambling on Indian reservations.

HR 1920, as amended

At the insistence of our competitors, the American Greyhound Track Operators Association (AGTOA) and the State of New Mexico, the House inserted a moratorium on any new Class III gambling facilities until the matter could be fully studied by the Congress, a period of four or five years. Having been involved in numerous Congressional, Administrative and Tribal studies on various issues throughout the years and the results of those studies, we view the moratorium as nothing more than a method by which our competitors can keep us out of business. The AGTOA does not want any tracks constructed unless their members own the tracks. We instead call for free enterprise, open competition and fairness. The Pueblo Council of the Pueblo of Santa Ana has enacted legitimate and existing ordinances to regulate racing within the reservation boundaries and pari mutuel wagering on that racing. This moratorium if passed, would abrogate the ordinances of the Tribe and attempt to overrule governmental action taken by the Tribal Council. The moratorium would also affect issues now pending before the Federal District Court for the District of Columbia in the case of Santa Ana v. Hodel, which will determine the legality of the Pueblo's actions and interpret applicable law and public policy as it relates to the gambling activity of pari mutuel wagering. It is extremely important that Congress leave to the courts the interpretation of these legal issues. It is dangerous and we believe unwise for Congress to interfere with ongoing litigation.

Congress has chosen to attempt to regulate Indian gambling. We support the idea even though we do not understand why Congress does not regulate all gambling within the United States if it is going to regulate Indian gambling. We see no reason or solution to only looking into Indian gambling. Certainly, if Congress were seriously interested in eradicating organized crime and drugs from gambling, it would pass national legislation. Nonetheless, we support the regulation of Indian gambling as we want fair games and we want fair treatment for everyone including the Tribe and the participants. Because of our desire to have reasonable regulations, I would next like to discuss HR 1920's Class III Indian gambling.

CLASS III INDIAN GAMBLING

The Pueblo of Santa Ana proposes that the Senate adopt reasonable regulations regarding Class III Indian gambling that would preserve the following principles:

1. Preserve Tribal Sovereignty. Tribal Ordinances and Management Contracts should be approved by a National Indian Gambling Commission or the BIA. Tribes should set the days and times for events within the reservation boundaries and should regulate these days and times.

2. Congress should eliminate the unfair moratorium included in HR 1920.

3. Indian Tribes should return to the public the same percentage of the handle as state race tracks pay so as to avoid unfair competition with off-reservation race tracks.

4. The states could be allowed, if they choose, to enter into contracts with the National Indian Gaming Commission or joint-powers agreements to police the day-to-day operations of the Tribal gambling enterprise.

5. Tribal enterprises should have only such gambling activities as are authorized by the state law and public policy as interpreted by the courts.

DISCUSSION OF PRINCIPLES

1. Protection of Tribal Sovereignty.

The National Indian Gaming Commission (or the Assistant Secretary for Indian Affairs) would approve Tribal Gaming Ordinances, Tribal licenses and management contracts just as it would for Tribal Bingo enterprises. These are governmental matters which the federal government could appropriately supervise, but on which there should be no state infringement. The Tribal ordinances will authorize the Tribes to regulate and establish dates and times for the events.

2. Eliminate the unfair moratorium.

The moratorium suggested in H.R. 1920, as amended, is unfair to Tribes since they would not be able to have any new enterprise for four years. The moratorium is contrary to the principles of economic self-sufficiency and tribal self-determination. The moratorium punishes Tribes for innovative economic development. It is much better to provide fair, reasonable and equitable laws and regulations as soon as possible. If Congress decides that a moratorium is necessary, those Tribes which were in operation or litigation before December 31, 1985, should, in all fairness, be exempted.

3. Fair competition with the State-authorized activities.

We must recognize that Tribal enterprises will be competing directly with State-owned enterprises and private enterprises authorized by the states. It would not be fair, therefore, for the states that are competing with Tribes to regulate the Tribes or the purses they pay to owners of animals. We must have a level playing field. Therefore, the percentage of the handle that a Tribe may return to the public in winnings should be substantially equal to the handle authorized to be paid out by non-Indian enterprises.

4. State contracting or joint-powers agreements.

Since the State Racing Commissions are already capable of handling day-to-day operations, inspections, blood tests and the like, the National Indian Gaming Commission would be allowed to enter into a regulatory contract with the State where a Tribal enterprise is being operated (if the State so chooses) or the State and Tribe may enter into a joint-powers agreement to police the day-to-day aspects of the events taking place. The Tribal enterprise involved would be required to pay for part of the State's services. If the State declines to contract, the Tribe would be required to conduct the police functions with oversight by the National Indian Gaming Commission.

5. Court to interpret applicable law and public policy.

If there is any question as to the type of gambling activity authorized by State law and public policy, it will be decided by the courts. There are three cases pending in this regard, Gila River Indian Community v. Attorney General of Arizona, Santa Ana Pueblo v. Hodel and The State of California v. Cabazon Band. Any other questions of interpretation likewise should be decided by the courts and not by Congress through special legislation which unfairly favors the economic interests of one segment of society over another.

SENATE BILL 902

The Pueblo of Santa Ana could support Senate Bill 902 with limited clarification. Tribal ordinances could be reviewed by the BIA, the National Indian Gaming Commission or a regional or local commission. The requirement of Section 6 (c) that individuals and entities could only be licensed by the Tribe if eligible to receive a license from the State should be clarified. We agree with this requirement insofar as it relates to the moral character and criminal records of an individual, but it should not preclude a Tribe from licensing a person for a different pari mutuel activity than the state allows if the courts decide that the activity is permissible. The interpretation of state law and public policy as it affects gambling on Indian reservations should be left to the courts and not legislated by Congress. The existing cases pending before the federal District Court in the District of Columbia and District of Arizona should resolve this matter. The Tribe has no problem advising the State of its license holders and the activities on the reservation. In fact, the Tribe welcomes a joint-powers agreement with the State or some State involvement in the policing of the day-to-day operations and drug testing and oversight on treatment of animals. In this regard, we refer you to the suggestions we have made for Class III gambling in this testimony, which we submit as a reasonable approach to the involvement of state officials in Tribal regulated activities.

The Pueblo of Santa Ana wants to compete in a legitimate free enterprise system. The Pueblo wants to exercise its rights of self-determination and through economic development create jobs for its people and revenues for the Pueblo in the future. We encourage you to give us the opportunity to be part of the American free-enterprise system. We appreciate the opportunity to express our views on this matter on behalf of the Pueblo of Santa Ana and will be happy to supply any additional information that the Committee or Senators would desire.

Yours very truly,

Roy Montoya

RM/ms

PREPARED STATEMENT OF NORA GARCIA

On behalf of the Fort Mojave Indian Tribe of Arizona, California and Nevada, I would like to present this statement concerning proposed Indian gamling legislation. At present, there are three formats under which the Senate may determine to regulate gambling in Indian country; namely, House of Representatives Bill Number 1920 entitled "Indian Gaming Regulatory Act," hereafter "H.R. 1920", Senate Bill Number 902, hereafter "S. 902", which is the companion bill to H.R. 1920, and the Administration's proposed bill entitled "Indian Gambling Authorization and Regulation Act of 1986", hereafter "Administration's bill". While the proposed regulatory schemes differ in many respects, all three efforts are geared towards classification of Indian gambling into seperate categories, dividing jurisdictional responsibilities over these categories between Indian tribes, the states and the federal government, allowing imposition of criminal sanctions for violations of the bills' requirements and establishment of a Commission to oversee Indian bingo and bingo related games.

Of the three proposals being reviewed, the Tribe here submits comments regarding H.R. 1920, which apply equally to S. 902, and lends its support to the Administration's bill, provided the same is altered to reflect a resolution of the Tribe's areas of concern. In this latter respect, the Administration's bill, and likewise H.R. 1920 and S. 902, is in need of attention to: (1) assure that the bill, when in final form, does not contain a moratorium on non-bingo or non-ceremonial and non-social gambling similar to that inserted in H.R. 1920; (2) repeal the existing federal criminal laws which would impede effectuation of the bill's purposes; and (3) alter the terms of Section 202(c) so as to allow Indian tribes to carry on gaming in conformance with state law upon passage of a tribal enactment granting the pertinent state jurisdiction over that activity.

I

INTEREST OF THE FORT MOJAVE INDIAN TRIBE

The Tribe's interest in the proposed bills stems from a need for economic and political self-sufficency, both of which are in turn affected by its ownership of Reservation property in close proximity to existing gambling centers in the State of Nevada. As should be evident, the Tribe's needs and location make it supportive of any effort which might result in it being afforded the same opportunity as its non-Indian, Nevada neighbors to participate in the State's primary industry. Like other Nevada tribes, the Fort Mojave Tribe is seriously concerned with Class III gaming as defined in H.R. 1920 and S. 920 and Section 202(c) type gambling under the Administration's bill.

Further, the Tribe believes that Class III gaming is in fact a subject more effectively and readily regulated by the states than by the federal government. The Tribe's position is predicated in large part on its Nevada residence. Nevada, unlike most other states, has extensive experience regulating and licensing gambling. It would thus seem unproductive to by statute create a duplicative federal regulatory apparatus which would be lacking in the expertise now possessed by the State.

The Tribe, therefore, appears before the Committee to express its general views on the pending legislation as it affects Indian tribes as a whole, and particularly as an Indian tribe desirous of acquiring an economic footing equal to the non-Indians of Nevada.

II

FEDERAL IMPEDIMENTS TO GAMING LEGISLATION

Under Section 202(c) of the Administration's bill and the Class III gambling provisions of H.R. 1920 and S. 902, games other than bingo, ceremonial or social would be "regulated and controlled by state law and ... violations of such state gambling statutes in Indian country may be prosecuted in federal as well as state court." Section 202(c). Were an Indian tribe to establish a Class III gaming facility in full conformance with state law, presumably it would not thereafter be acting in violation of federal or state law. But in order to make this provision effective, the existing federal gambling statutes would have to be partially repealed.

There are several federal criminal statutes which speak to actions defined as gambling, racketeering, or aspects of organized crime. *E.g.*, 18 U.S.C. §1916 *et seq*. In most instances, the controlling federal law does not come into operation unless the underlying act was one "chargeable under State law." Id. Nevertheless, the spectre of criminal prosecution continues to follow Indian tribes that perform activities specifically authorized by the pending legislation. To the Tribe's mind, this is an issue that should be addressed in any federal regulatory effort aimed at Indian gaming.

Moreover, regardless of whether an Indian tribe has complied with applicable state law, it is unlawful "to manufacture, recondition, repair, sell, transport, possess or use any gambling device...within Indian country...." 15 U.S.C. §1175. As a result, the Indian tribes of Nevada and elsewhere could find themselves in the position of having fully complied with a state's criminal, regulatory and licensing laws when opening and operating a facility containing gambling devices and then learn that the tribe's officers, employees and patrons were subject to prosecution under 15 U.S.C. §1175.

If either the Administration's bill, H.R. 1920 or S. 902 is to have the desired effect of placing Section 202(c)/Class III gaming solely within the states' jurisdictional arena, 15 U.S.C. §1175 and other federal laws relative to gaming must be removed from application to Indian tribes who act in conformance with state law. Otherwise, an Indian tribe could conceivably mirror the lawful actions of its non-Indian neighbors and thereby be in violation of federal gambling laws designed for Indian country application. Such a situation can hardly be reconcilled with the federal govenment's avowed respect for Indian sovereignty and certainty is contrary to an equal treatment of Indians and non-Indians and to the purpose of subjecting Class III gambling on Indian reservations to state jurisdiction and state law.

The Fort Mojave Tribe, accordingly, suggests that the Administration's bill, H.R. 1920 and/or S. 902 be amended to provide that Indian tribes in possession of gambling devices pursuant to state law and conducting gaming in accordance with state law be exempted from federal prosecution for performance of those activities. Failure to so amend the bills will ultimately result in Indian tribes being the object of disparite treatment, convolution of the legislation's goal to confine Section 202(c)/Class III gambling to the exclusive purview of the states, and a cloud of potential criminal sanctions being placed over the heads of tribal officials and employees who have done all that was required of them under the bills.

III

STATE JURISDICTION

As now written, H.R. 1920 and S. 902 anticipate the eventual application of state law requirements to non-bingo, non-ceremonial and non-social gambling, while Section 202(c) simply bestows jurisdiction on the states over those activities without any further delegations by affected tribes or the United States. This unilateral recognition and federal absorbtion of state law will undoubtedly be met by heated debate centering on self-sufficency, self-determination, tribal sovereignty, infringment on the President's Indian policy, the states' historic disrespect for tribal rights and the federal government's responsibility to protect and preserve those govenmental attributes remaining to Indian tribes. The Fort Mojave Tribe, believes however, that these arguments miss the central point, that the application of state law on Indian reservations does not present any problems if it is agreed to by the affected tribe. In fact, providing authority for each Indian tribe to make its own decisions whether to accept any form of state jurisdiction actually furthers tribal self-determination.

The Fort Mojave Tribe agrees with the drafters of the Administration's bill that the states are in a better position to regulate Class III gambling within their respective borders than is the United States. The Tribe suggests, however, that this conclusion can be implemented in a much more even-handed manner than the bills have provided. The Tribe believes that any application of state law to Indian country should depend on acceptance thereof by the tribe wishing to operate a Section 202(c)/Class III facility through a tribal enactment.

Under the amendment proposed by the Tribe, a state would not have any jurisdiction on Indian lands unless a tribe enacted its own ordinance authorizing gambling other than bingo, social, or ceremonial gaming. If this route were followed, Indian gambling and state jurisdiction thereover would be similar to 18

U.S.C. §1162, under which states can obtain certain types of criminal and civil jurisdiction on Indian reservations only with the consent of the affected Indian tribe. A provision of this kind would not impair or undercut tribal sovereignty to the extent of a direct application of state law by the federal government, because a state would not have any jurisdiction without a tribe's consent and unless a tribe invites the state onto the reservation for this limited purpose. Contrary to the Administration's bill, H.R. 1920 or S. 902, a consent provision of the kind suggested strengthens tribal sovereignty, inasmuch as it is predicated on the premises that states and their laws generally lack authority over activities on Indian reservations unless Congress affirmatively and specifically grants it and that states cannot exercise such jurisdiction absent consent thereto by the pertinent tribe.

If this proposed amendment were incorporated within the Administration's bill, the Tribe believes the problems and conflicts can be avoided. Equally so, by continuing the respect granted to tribes to govern their lands and members by a requirement of tribal consent to state jurisdiction and/or the use of state laws, the bill would then follow that path cleared by prior statutes and case law aimed at seperation of federal, tribal and state jurisdiction and comport with the purposes and import of the Indian Self-Determination Act, 25 U.S.C. §§450 *et. seq.*. The Tribe, therefore, voices its opposition to H.R. 1920 and S. 902 and, again, suggests amendment of the Administration's bill to provide that state jurisdiction over Class III type gambling shall come into effect only upon passage of a tribal ordinance authorizing non-bingo or non-social or non-ceremonial gaming.

IV

NEVADA AMENDMENT

On the floor of the House of Representatives, H.R. 1920 was amended at the request of Congresswoman Vucanovich to state that its terms "shall not apply to gaming on Indian lands located within the State of Nevada." A review of the debate preceding the Vucanovich amendment reveals that what was sought was not inapplicability of the bill to Nevada, but rather a recognition of Nevada's ability to regulate and license gambling free of federal supervision and interference.

Assuming the Administration's bill were to become law, as opposed to H.R. 1920 or S. 902, the Vucanovich amendment would be of no importance, since Section 202(c) would accomplish what the Tribe believes were the aims of Congresswoman Vucanovich. As things now stand, however, this amendment operates to prevent Indian gaming in the only state with Indian reservations where gambling is carried on as a state-wide industry. That result cannot be countenanced.

The Fort Mojave Tribe requests that Congresswoman Vucanovich's amendment be omitted from any Indian gaming legislation. As noted, were it to be allowed to remain as currently incorporated in H.R. 1920, the amendment would have the curious effect of providing for Indian gambling in those states without the full gamut of gaming activities and, simultaneously, barring Indian gambling in the only state with a significant Indian population where gambling is an aspect of everyday life.

V

GAMBLING MORATORIUM

As H.R. 1920 made its way through the House of Representatives, the bill's language allowing for Class III gaming, the equivalent of Section 202(c) gambling under the Administration's bill, was substantially diluted by holding the authorization for Class III gambling in abeyance for four years. The Tribe understands this change to result in a prohibition against any "new" Class III gaming and as a bar against expansion of existing Class III operations to other forms of gambling. To the Tribe's mind, imposition of such a moratorium impinges on the rights bestowed by the Class III authorization of H.R. 1920 and would be a self-defeating amendment of any Federal gaming legislation.

The Administration's bill grants to Indian tribes the opportunity to conduct Section 202(c) gaming when governed and provided for by state criminal, regulatory and licensing laws. To grant this opportunity on the one hand and instruct the grantee that it may not exercise the grant until four years hence on the other seems to make no sense. By imposition of a moratorium, the direct approach to Section 202(c) gambling and state jurisdiction of the Administration and the goals of H.R. 1920 are relegated to a mere pronouncement that someday Indian gaming will be the subject of a comprehensive and all inclusive federal/state/tribal regulatory system. The Tribe does not see such a delay as benefiting any of the parties interested in the legislation's end result and, instead, as simply a means to put off the inevitable.

In addition, the Fort Mojave Tribe can ill-afford a continuation of the present no gambling for tribes/gambling for non-Indians dichotomy. At present, Nevada tribes are forced to watch the development, use and growth associated with gambling on non-Indian land, while their land and members remain idle and tribal treasuries dwindle. Any attempt at preservation of this economic disparity for whatever period will, of course, be met with disfavor. Further, the Fort Mojave Tribe's gaming activities are already at a distinct disadvantage due to the present existence of next door gambling facilities and growing patron loyalty. While not at all squeamish about competing with these non-Indian owned and operated establishments, the longer the Tribe's move into a competitive posture is delayed, the less likely it will be to enter the fray on a near equal footing.

The Tribe, therefore, strongly advises against inclusion of a moratorium on Section 202(c) gaming in the Administration's bill and opposes the moratorium included within H.R. 1920.

Simply put, if the bill is intended to provide for gambling when it occurs in accordance with the laws of the state, no end is served by delaying that result.

VI

CONCLUSION

As should be evident, the Fort Mojave Tribe has a substantial stake in seeing a federal, Indian gambling bill become law. A tribe of few natural resources, that occupies an arid region dependent upon irrigated farming and lease income for its operating revenues, the Fort Mojave Tribe has felt, possibly more than others, the impacts of reduced federal assistance and the budget cutter's knife. To strive to grow and develop under present conditions is difficult. That effort is compounded by feelings of futility and anger when the Tribe tries to pay bills and continue its operations, and must at the same time watch non-Indian lands developed as gambling centers with the parks, stores, businesses and people that follow. Yet as things now stand, the Tribe is forced to remain in this distressed posture because it cannot do what other non-Indian, Nevada residents can. It strains not only the Tribe's patience but its reason to assume that such an unequal system is seen by some as performance of a trust responsibility by the government and in conformance with self-determination and recognized Indian policy.

The Tribe is here today to inform the Senate that passage of Indian gaming legislation in the face of reduced federal assistance is not only appropriate but imperative. We, as an Indian tribe, are not the owners of this country's most fertile land or its primary economic centers. If we are to survive as an independent, self-sufficient, viable people, business and industry, in whatever form, are a necessary part of Reservation life.

Finally, the Tribe would reiterate its support for the Administration's bill provided that it is amended to take into account the need to exempt Indian tribes complying with its provisions from other federal statutes bearing upon gambling, adopts a reasonable approach to the vesting of jurisdiction upon states of on-reservation Indian gaming and allows for those activities authorized thereunder to be of immediate usage by Indian tribes. With respect to H.R. 1920 and its sister bill, S. 902, neither adequately recognizes that Class III gambling is an issue properly for the state of Nevada in our instance and do not, in the Tribe's opinion, reflect as acceptable an approach to bingo, Indian social and ceremonial gaming, or the federal government's role therein as the provisions of the Administration's bill.

The Fort Mojave Tribe, therefore, respectfully recommends that this Committee support and send to the Senate the proposed "Indian Gambling Authorization and Regulation Act of 1986", modified in those respects addressed above.

CONSOLIDATED PREPARED STATEMENT
OF
HARTLEY WHITE, CHAIRMAN, LEECH LAKE BAND OF CHIPPEWA
DARRELL WADENA, CHAIRMAN, WHITE EARTH BAND OF CHIPPEWA
before the
SELECT COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE
June 17, 1986

INDIAN GAMING LEGISLATION

(1) H.R. 1920, (2) Administration bill, and (3) S. 902

We appreciate the opportunity to testify today to offer the joint views and recommendations of our respective Chippewa Bands concerning H.R. 1920, the Indian Gaming Regulatory Act; S. 902, the Indian Gaming Control Act; and the Administration's proposed bill, the Indian Gambling Authorization and Regulation Act of 1986. Also, we shall report on our own gaming operations and what they have contributed to our reservations and to the broader non-Indian communities as well.

The Leech Lake Reservation Business Committee (RBC) and the White Earth Reservation Tribal Council (RTC) extends appreciation to the Committee for scheduling this hearing on important legislation relating to the Indian gaming issue.

The Leech Lake RBC and White Earth RTC recommend enactment of H.R. 1920, if amended as suggested herein.

We wish to emphasize at the outset that the gaming operations conducted on our reservations, which include bingo and pull tab sales, are wholly-owned and operated by our respective Bands. There are no outside managers involved in these gaming operations. Neither of our Bands hold membership in the National Indian Gaming Association. We reserve the exclusive right to speak for our respective Bands on the subject of Indian gaming that we view as an attribute of our inherent sovereignty.

H.R. 1920

H.R. 1920, as passed by the House of Representatives, is the product of over two years of intensive work on the Indian gaming issue by the House Committee on Interior and Insular Affairs. While we appreciate this Committee's interest in that issue, H.R. 1920 is, in our view, in keeping with the precepts of Federal-Indian relations, including the inherent sovereign powers of Indian tribes.

This measure provides a Federal regulatory scheme for gaming on Indian lands. It creates a National Indian Gaming Commission to provide Federal recognition and regulation of Indian gaming activities. The eight member Commission is made up of at least three Indian members, a member appointed by the Attorney General, one member representing the States, and the Chairman selected by the Secretary of the Interior.

The Commission has a very powerful Chairman who is the only full-time member. He is in effect the Staff Director or Chief Executive Officer of the Commission. He has the exclusive power to:

- approve or disapprove tribal ordinances for gaming regulated by the Commission.
- approve or disapprove tribal management contracts for gaming regulated by the Commission.
- appoint and supervise all staff, with the exception of the General Counsel.

The Chairman shares with the Commission the power to:

- appoint a General Counsel.
- temporarily close tribal gaming activities.
- levy and collect fines.

The Commission has the exclusive non-delegable power to:

- adopt a annual budget.
- adopt an annual assessment rate within the ceiling set by the bill.
- authorize the issuance of subpoenas.
- permanently close tribal gaming activities.

The bill divides gaming into three groupings:

Class I covers traditional or ceremonial Indian gaming and is within the exclusive jurisdiction of the tribes.

Class II covers bingo and bingo type gaming and is regulated by the tribes. Tribal ordinances must meet the specific standards of the Act, and be approved by the Chairman. The Commission has the authority to order closures and levy fines for violations of the Act.

Class III covers gaming beyond Class II and involves the more complex and controversial forms of gaming. These include such games as casinos, pari-mutuel dog and horse racing, Jai alai, etc. As passed by the House, Class III has been deleted from the bill, a moratorium is imposed for 4-years, a 2-year GAO study is mandated, Congress has 2 years to act on the GAO study, if Congress fails to act at the end of the 4-year moratorium Class III Gaming remains under the state of the law, and Class III games in operation as of January 1, 1986 are grandfathered.

The bill also provides for extensive requirements on management contracts.

Although H.R. 1920, as passed by the House, may contain specific provisions objectionable to our Bands, it contains other provisions that meet broader tribal considerations and make the bill generally acceptable in its present form. For example, H.R. 1920, in essence, codifies the state of the law emanating from several Circuit Court rulings. In these cases, the States had challenged the right of certain tribes to engage in bingo gaming, exclusive of State jurisdiction and control. The Circuit Courts were faced with the task of determining whether or not the State possessed the right to license and regulate bingo operations on the affected reservations. The question turned on whether State laws regulating bingo operations were criminal/prohibitory or civil/regulatory. The Courts found that the operation of bingo games in these States were not prohibited by State laws as against public policy, but merely regulated. These Courts held that the State laws were civil/regulatory in nature, and were not applicable to bingo operations on the Indian reservations involved in the challenges.

By codifying the state of the law in H.R. 1920, Indian gaming would be insulated from future legal challenges. Given our substantial capital investment in the gaming operations, such insulation would guarantee certainty with respect to these operations.

Also, the definition of "bingo" under Class II Gaming in H.R. 1920 includes pulltabs and punchboards. With both of our Bands deriving substantial income from pulltab sales, this definition is vital to the continued economic viability of our gaming operations.

Our proposed amendments to H.R. 1920, attached hereto, would (1) return the assessment to that proposed in the Amendment in the Nature of a Substitute used at the House Committee markup; and (2) return the composition of the National Indian Gaming Commission to that proposed in the Committee substitute bill.

To reiterate, we urge this Committee to move for the prompt enactment of H.R. 1920.

The Indian Gambling Authorization and Regulatory Act of 1986

Mr. Chairman, we are somewhat puzzled over the fact that the Administration's Indian Gambling bill was transmitted to Congress by executive communication on May 20, 1986, and, as of this date, no Senator, for whatever reasons, has introduced the bill. Is it possible that all members of the Senate share the Indian community's objections to the measure? As a matter of academic interest, we are compelled to ask if there are many instances in which the Senators decline to introduce an Administration legislative proposal on any subject matter?

Our comments on the Administration's proposal are based on our study of the bill accompanying the May 20 executive communication, which we presume is the relevant copy for purposes of this hearing today.

Initially, we were disappointed, and saddened as well, to note that this measure totally ignores the remarkable progress achieved by tribal governing bodies through the exercise of their inherent sovereign powers towards achievement of true self-determination. There are precious few shared Federal/tribal powers authorized in this measure, notwithstanding clear evidence on hand demonstrating that many tribes have operated and regulated their own gaming enterprises for several years.

The bill virtually guarantees control of the American Indian Bingo Commission, established pursuant to Section 302, by the Secretary of the Interior and the Attorney General. The Commission is established in the Department of the Interior, and the Secretary and Attorney General appoint two commissioners and one commissioner, respectively, from employees of their respective Departments. The Secretary is empowered to appoint one of his designees to serve as Chairman.

We strenuously object to the notion that employees of Federal Agencies, serving as Commissioners, should be vested with sweeping powers and control over economic enterprises owned and operated by sovereign Indian tribes. In addition, these Commissioners' loyalties will necessarily rest with the Secretary and Attorney General and their respective departments. We fail to envision how this Commission would be able to function in an independent manner in the area of Indian Gaming.

We are deeply disturbed over the broad rule-making authority that would be vested in the Commission pursuant to section 305. We interpret section 305(a)(4) to mean that the Commission could curtail the hours we now operate our gaming facilities under the current state of the law. This provision is a blatant attempt to impose State regulations through the "back-door" on our gaming enterprises.

The Secretary and Attorney General are fully aware that our ability to operate and regulate tribal gaming, exclusive of State jurisdiction, provides us with the competitive edge of unlimited hours over the State regulated games. This provision would permit the Commission to unilaterally narrow that competitive edge, if not eliminate it altogether. If enacted, this provision holds the potential for destroying the economic viability of Indian gaming enterprises. We are forced to ask if this is the Administration's hidden objective.

Section 305(a)(8) poses a further prospective threat to the economic viability of Indian gaming enterprises. This provision would permit the Commission to set limits on prizes and jackpots in bingo games conducted in Indian gaming facilities. Here again, the Administration proposes to erode another of our competitive edges over the State-regulated games.

An earlier provision in the bill, Section 301, Definitions, also strikes at the economic viability of Indian gaming. This provision effectively narrows the definition of "Bingo" to allow only bingo games to be operated by Indians, and it bars pulltab or punchboard sales in conjunction with such games.

Many tribal gaming operators, like their charitable gaming counterparts, have combined pulltab or punchboard sales with their bingo games where the civil/regulatory scheme is applicable to pulltab and punchboard sales.

Significantly, pulltab sales amount to over 40 percent of the gross income for many tribal gaming operations where such sales are conducted in combination with bingo games. The very trustee who has approved tribal gaming ordinances, with full knowledge that pulltab sales were included, now proposes to disallow such sales. Also, the trustee has approved guaranteed loans to tribes to help finance the establishment or expansion of gaming enterprises when he was aware that such enterprises would offer bingo games and pulltab sales to the players.

When taken together Sections 301, 305(a)(4) and 305(a)(8) would render a fatal blow to scores of successful tribally-owned, operated and regulated gaming enterprises. Moreover, it will discourage other tribes from exercising their inherent sovereign right to engage in gaming because of these constraints. No self-respecting legal trustee, in any other field, would be allowed to continue in business if he behaved in a manner exhibited by the Secretary and Attorney General in the area of Indian gaming.

Mr. Chairman, we have highlighted only a few of our concerns related to the Administration's Indian gambling bill. Perhaps the failure of any Senator to step forward and sponsor the bill will send a signal to the Administration. However, should the bill be introduced and referred to the Committee, we urge its rejection.

S.902

We commend Senator DeConcini for his sponsorship of positive legislation in the area of Indian gaming. His bill bears a close resemblance to H.R. 4456, the predecessor to H.R. 1920. However, S.902 departs substantially from H.R. 4456 by authorizing the establishment of Regional Indian Gaming Commissions to oversee the regulation of Indian gaming operations.

Our study of this bill raises serious questions on its applicability throughout Indian country in terms of consistent policy. Therefore, we request that the Committee defer action on S.902 in favor of H.R. 1920.

Band Gaming Operations

Mr. Chairman, our governing bodies turned to the establishment of bingo operations and pulltab sales on our reservations and established several major objectives to be followed in the conduct of these operations. One, to provide meaningful employment to Band members who where willing and able to work; two, to generate sorely needed income for economic development, social services, and Band government operations; and three, to provide bingo enthusiasts, Indian and non-Indian alike, in our market areas, with an opportunity to participate in fair and efficient high-stakes bingo games in comfortable surroundings.

We wish to emphasize that our Bands embarked on the bingo operations with the clear conviction of our sovereign tribal right to conduct gaming activities within our jurisdictions, free from State control. The case law supporting our convictions is a matter of record before this Committee, and requires no further elaboration on our part. Significantly, 80 Indian tribes or more have exercised their sovereignty in the area of gaming since the late 1970's and have established bingo operations of varying sizes on their respective reservations within their jurisdiction, exclusive of State control.

Our decision to establish bingo operations was not undertaken precipitiously. Rather, we went through thorough planning processes looking at the potential costs of establishing the games, the expenses involved, potential gross receipts, and the potential net return to our Bands. Importantly, we rejected the overtures of outside managers who offered to finance capital investment and start-up costs. In return, they sought long-term contracts with a high percentage of the returns in order that they might recoup their investment. Our Bands have successfully administered several business enterprises on our reservations. Given our record of successfully managing other business ventures, we were confident of our abilities to manage the bingo operations on our own and realize a greater economic return for the Bands as a whole.

1. Leech Lake Bingo Palace

A decision was made early on to enter the bingo field in a modest fashion. The first game was opened in May 1983 in the Facility Center and was later moved to a vacant bowling alley. The bingo game caught on quickly in the area, and it was necessary to expand the seating capacity to 350 in the temporary facilities. However, it became obvious that even with this expansion, we were still not meeting the demand of bingo enthusiasts in the market area. It was at this point that the governing body began developing plans to put together a funding package that would enable us to establish a new facility to house the bingo operation and pulltab sales. Based on our experience in the makeshift facilities, we estimated that the new facility should be able to accommodate 350 to 1300 players, and we wanted it to include state-of-the-art sound and video systems, modern restroom facilities, a food service, adequate administrative offices and a safe security and fire system. Based on such plans, we estimated that it would be necessary to put together a funding package of approximately $1.3 million. We are pleased to report to this Committee that the Band was successful in securing a $250,000 grant from the Department of Housing and Urban

Development, a $650,000 guaranteed loan through the Bureau of Indian Affairs, and $453,000 was committed from our own resources to achieve the package of $1.3 million.

Construction of the 124 foot by 300 foot steel building to house the bingo operation was completely undertaken and finished by the Band-owned construction company. As a result, members of our Band enjoyed the income from employment during the construction period. The income received by such employees benefitted the local community as well as non-Indian communities where the employees purchased consumer goods and services for themselves and their families.

The new Leech Lake Bingo Palace was officially opened in November 1984. A record of over 1600 patrons turned out for the weekend games. Since that time, we have experienced a 50 percent increase in the average attendance at the games. Today, we serve approximately 325 players during each regular game and our special holiday sessions consistently have attracted levels of 700 players or more. The new facility, because of the flexibility in our seating arrangement, can accommodate 750 to 1300 patrons.

At the time of the opening of the new Bingo Palace, we offered the patrons, drawn from points in northern Minnesota and Canada, an opportunity to participate in bingo games and pulltab sales three nights per week. In response to the patrons requests, we initiated a mid-week bingo game to accommodate primarily the non-Indian players on Wednesday evenings. The results have exceeded our expectations and this event has evolved into our most popular game night.

A brief review of the operation of the new Bingo Palace will demonstrate the importance of gaming to our Band and surrounding non-Indian communities.

At the present time, the Bingo Palace provides employment to 65 people. Ninety-nine percent of the employees are enrolled members of the Minnesota Chippewa Tribe. The payroll is approximately $300,000. The bulk of this income is spent on the Reservation and in nearby off-reservation, non-Indian communities for consumer goods and services.

It should be noted that 20 percent of our present staff received some form of public assistance prior to being employed by the Bingo Palace.

Our gross income for the first eleven-month period was $3,842,000. After deducting a generous pay-out to patrons, all overhead expenses, including debt service, we realized a net profit of $163,427.

The net income has been allocated as follows: 50 percent to the various communities for general support; 30 percent for constituent services, including emergency problems; and 20 percent to supplement social service programs (health, education and welfare).

Mr. Chairman, The Leech Lake Band is aware of the allegations that have emanated from the Department of Justice over the past several years that Indian gaming is serving as a new attraction for criminal elements. They have raised all kinds of fears of organized crime infiltrating highstakes bingo games that are being conducted elsewhere on reservations throughout the country. We at Leech Lake are in no position to judge the manner in which other bingo games are being operated and regulated by the respective tribes, nor are we in a position to evaluate the performance of outside managers who are operating bingo games for tribes on their reservations. We are, however, well informed on the manner in which we are operating and regulating our own bingo game and pulltab sales in The Leech Lake Bingo Palace. We can state with all assurances to this Committee today that state-of-the-art accounting procedures, strong checks and balances, monitoring of the game and other oversight functions are diligently carried out by the bingo manager and his staff in order to prevent any wrongdoing from occuring either in the bingo games or in the pulltab sales. The bingo manager is responsible to the Reservation Business Committee and the Reservation

Business Committee is responsible for the conduct of the games to its membership. Our efficient system of numerous checks and balances maintains a clear audit trail in all respects, and it should be noted that our policies require and enforce an annual independent outside audit of each business enterprise conducted by the RBC, including the Bingo Palace.

Clearly, The Leech Lake Bingo Palace has met in part the economic needs of our reservation, and it has met the gaming needs of the public-at-large by conducting bingo games and pulltab sales that are permissable under the current state of the law.

2. White Earth Golden Bingo Lodge

Following extensive study and evaluation by the White Earth Tribal Council, the Band established a small gaming operation in 1984. The Bingo Lodge is operated in the Humanities Center in the village of White Earth, Minnesota, which is the center of tribal government activities for the reservation.

The Lodge operates on Friday and Saturday evenings and offers bingo games and pulltab sales for its clientele. From its inception, the Lodge has enjoyed an average attendance of 150 players per night. The facility is shared with other community groups and has a seating capacity of 350 people.

The average cost to enter and play bingo at the Lodge is $21.50 per person. It is estimated that the average amount spent per person is $45.00, which includes bingo and pulltab sales. The average total "pay-out" to the players is $5,500.00.

Our findings indicate that 90 percent of current attendance is composed of players residing within a 25-mile radius of White Earth. This area encompasses a population of approximately 9,500 people, with 32 percent Indian and 68 percent non-Indian.

The Lodge employs 3 full-time and 18 part-time employees. All employees are Indian and are from the reservation area. Our staff received formal training from Jack-Pot, Inc., a North Dakota firm with ten years experience in gaming operations. The annual payroll is $49,207.

For the last fiscal year period, the Lodge reported gross sales of $1,414,889, and a net profit of $99,272 profits from the Lodge operations are dedicated equally to support (1) tribal government administration; (2) tribal economic development ventures; and (3) tribal supplement to social programs and services utilized by Band members.

Even with limited exposure and advertising, the part-time gaming operation at White Earth in just two years has begun drawing players from various outlying regions, including the Minnesota cities of Detroit Lakes, Wadena, Fergus Falls, and, occasionally, the Fargo-Moorhead metropolitan area. However, the design, location and size of the current Lodge facility precludes our ability to capitalize fully on this economic opportunity.

This encouraging growth speaks to the popularity, integrity and fairness of our gaming operation. Moreover, it points to the priceless opportunity available to the Band to expand its gaming operations to serve a larger market area and to further improve the economy of the reservation.

We want to take advantage of this opportunity, so the Council decided to secure data and information on which it could make an educated decision on whether or not to expand the gaming operation. We entered into a contract with a reputable certified public accounting firm to undertake an objective, independent, professional market study for this purpose. That study was presented to the Council on January 21, 1986, and served to support a decision to expand the gaming operation and relocate the Lodge to a more strategic site on tribal trust land within the exterior boundaries of the reservation.

Based on the findings of this study, the Council has developed a plan to relocate the Lodge in a proposed new facility at Callaway, Minnesota, that will permit us to serve an expanded market within a 100-mile radius of that site. Significantly, there are no other tribally-owned high stakes bingo and pulltab sales operations capable of competing for this targeted market area. The Callaway City Council supports our decision to relocate the Lodge and will cooperate to insure that all public facilities are available for use by the Lodge.

The expanded market, based on the 1980 Census, encompasses a permanent market area of over 250,000 people in seven Minnesota counties and the Fargo, North Dakota/Moorhead, Minnesota, areas.

The new facility will be sized to accommodate 838 players on a full-time basis. Player participation is expected to increase by 95 percent to 135 percent over a five year period.

The objective of the proposed expansion is to reach sales of $4,740,000 in the first year and to increase annual sales by 5 percent per year for each of the succeeding four years. We project an annual profit of $400,000 to $600,000 that will be dedicated to tribal government, economic development and community services.

The expansion will increase employment to 33 full-time employees with an annual payroll over of $300,000.

It has been estimated that $1,250,000 will be required for construction costs and working capital. We are seeking a combination of a federal guaranteed loan and grant for these purposes.

Mr. Chairman, the White Earth Band has exercised its inherent sovereign right in a responsible manner by engaging in a gaming operation. From our modest and part-time game, we have gained the experience to seize the broader economic opportunity by expanding the existing operation. Our expansion plans are compatible with the Administration's Indian economic development policies, calling upon tribal governments to assume the lead in economic development for their reservations.

The proposed expansion of the Golden Eagle Bingo Lodge will provide the Band with income to improve the reservation economy, to provide employment to our members and to fund programs and service that will enhance the quality of life for our people.

Conclusion

Mr. Chairman, we are confident of our inherent sovereign right to operate gaming activities on lands within our jurisdiction, exclusive of State control and jurisdiction. We are not unmindful, however, of repeated legal challenges undertaken by the States to this valuable sovereign right, and notwithstanding rejection of such challenges by the Federal Courts, we are concerned that continued challenges will consume the limited resources of all involved parties. We believe, therefore, that the enactment of legislation is necessary to insure the preservation of such sovereign right.

In this connection, we have heard the disquietening news of the U.S. Supreme Court's recent announcement that it will review two Circuit Court Cases involving Indian gaming where the lower court rejected the State of California's contention that its jurisdiction extended to Indian gaming operations on reservations. We urge this Committee to exercise its legislative responsibility and move forward to enact constructive legislation in the area of Indian gaming. By doing so, the Committee will be fulfilling its trust responsibility in a timely and responsible manner.

Mr. Chairman, we recognize the need for enactment of legislation to clarify and resolve the legal uncertainties currently surrounding Indian gaming within Indian reservations. Such legislation, in our view, would give meaning and substance to President Reagan's Indian Policy Statement of January 1983, in which he clearly states the need for the tribes to develop mechanisms that will provide jobs and income to reduce their dependance on the Federal Government.

The enactment of appropriate legislation will affirm and protect the sovereign right of Indian tribes to license, regulate and operate gaming activities within Indian country in those States where the general public is not prohibited under State law from engaging in such activities and will provide for uniform Federal standards and regulations for the orderly conduct of gaming on Indian reservations. Further, it will establish a clear and concise policy direction on the gaming issue, eliminate further litigation, and serve the best interests of the Indian tribes and the public at large -- especially the patrons of Indian gaming establishments.

We believe the record will demonstrate that through the exercise of their unique sovereignty, Indian tribes have begun to use gaming operations to generate income and are using that income to support basic functions of government, to formulate long-term economic development plans, and to generally address the economic hardships of their members. We urge this Committee to move quickly for enactment of H.R. 1920 to preserve this valuable tribal sovereign right and its associated economic benefits. Mr. Chairman, to reiterate, we would support enactment of H.R. 1920 if amended as we suggest in the attached amendments and description.

PROPOSED AMENDMENTS
TO
H.R. 1920

1. On page 4, line 23, delete the word "eight" and insert the word "seven".

On page 5, line 12 through 14, delete all of subparagraph "(D)".

On page 6, line 1, delete the word "members" and insert the word "member".

On page 6, line 2, delete the word "paragraphs" and insert the word "paragraph".

On page 6, line 2, delete "and (1)(D)".

These amendments authorize a seven-member National Indian Gaming Commission by eliminating the appointment of an eighth member to represent the interests of the States.

We contend that the Commission authorized to implement and manage the Federal regulatory scheme for Indian Gaming should be a Federal/Indian entity.

State interests are adequately represented by the Act and there are no compelling arguments to justify a Commission slot for the States' interests.

2. On page 24, line 4, delete "three-quarters" and insert "one half".

On page 24, line 6, delete "2-1/2" and insert "2".

These amendments limit one-half of the Commission's budget to be derived from a 2-percent assessment on the gross revenues from each Indian Gaming enterprise.

We believe the Commission's budget should be shared on a 50/50 basis between the Federal Government and Indian Gaming activities. If no Commission was authorized in the Act, the Federal Government arguably could be required to fund all of the trust responsibilities related to Indian Gaming.

We view the 50/50 sharing of the Commission's budget a more equitable arrangement.

PREPARED
STATEMENT OF
GORDON DICKIE, CHAIRMAN
MENOMINEE TRIBAL LEGISLATURE
ON
H.R. 1920,
THE INDIAN GAMING REGULATORY ACT
BEFORE
THE SENATE SELECT COMMITTEE ON INDIAN AFFAIRS
JUNE 17, 1986

Mr. Chairman and members of the Committee:

My name is Gordon Dickie. I am Chairman of the Menominee Tribal Legislature. The Menominee Tribe occupies a 234,000-acre reservation located in northern Wisconsin, approximately 45 miles west of Green Bay. Because of the importance of the legislation under consideration by this Committee to provide a statutory framework for certain gaming activities in Indian country, I believe that my tribe's perspective, gained from the operation of bingo on our reservation, can be helpful to this Committee.

While the Menominee Tribe, and many other tribes throughout the country, are successfully and profitably operating bingo establishments free of state regulation and without the need for federal supervision, we recognize that federal legislation in this area is nonetheless necessary. The Supreme Court has recently agreed to review the question of whether Indian tribes may continue to operate bingo free of state regulatory control, and could decide to reverse precedents in this area. We believe that Congress should affirm these lower court precedents and statutorily recognize the sovereign right of tribes to operate bingo in those states where bingo is permitted in some form.

The Menominee Tribe has operated its bingo establishment, pursuant to a tribal ordinance, for six years. In comparison to other Indian tribal bingo operations, the Menominee's bingo game is small and offers modest prizes. Our game is in operation five days per week with the daily prizes total averaging about $500. Occasionally, we have special nights where prize values reach $3,000. Our clientele comes primarily from the surrounding Indian and non-Indian communities and our crowds generally number some 250 people per night. In essence, one could describe our operation as a community bingo game. We do not attempt to compete with any high-stakes tribal bingo operations which draw their clientele from a more widespread geographic area.

The Tribe operates its own game, having decided by referendum vote not to hire an outside management contractor. This decision has worked well for our tribe and has assured that the Tribe alone has the responsibility for and enjoys the profits of our establishment. A five person Commission, appointed by the Tribal Legislature, has responsibility for the bingo enterprise. The Commission makes monthly reports to the Legislature, and tribal officials have unlimited access to the books and records of the enterprise.

We rate the Menominee bingo operation as an unqualified success. The games have been fairly and efficiently operated, have proved to be a source of recreation for our clientele and a source of much needed employment for our tribal members. The profits we have realized, like the size of our games themselves, have been modest. Nonetheless, these profits have been put to good use in subsidizing tribal programs, have given the Tribe flexibility to plan new economic development ventures, and have generally enhanced the quality of life on the Menominee Reservation. With these revenues, we have, for example, been able to help needy tribal members make essential home improvements; help fund funeral expenses of indigent Indians; subsidize the tribal newsletter and museum; enhance Reservation sanitation and fire protection facilities; and undertake development of recreation resources on the Reservation.

Our community-oriented bingo operation has earned substantial support from our Indian people as well as from the non-Indian communities around our Reservation.

Through the diligent efforts of the Tribal Legislature and the tribal members who comprise the bingo Commission, we have experienced no significant increase in law enforcement problems. The Commission's own security force -- which includes experienced off-duty tribal police -- has proved more than adequate to meet any law enforcement needs on bingo game days.

We are aware that several states advocate the application of state law to Indian bingo -- assertedly in order to keep out the so-called organized crime influences. Our games have attracted no such outside influences because they are fairly and honestly run by tribal members. I might add that although this fear of organized crime has been raised with regard to higher-stakes tribal bingo operations, the occurrence of any such criminal activity has not, to my knowledge, ever been demonstrated. In order to assure that such events do not occur in the future, we believe it would be wise for Congress to establish the National Indian Gaming Commission as set out in H.R. 1920. The oversight functions this panel would perform would go a long way in assuring Indians and non-Indians that tribal bingo operations will fulfill the purpose for which they are established: generation of revenue to meet basic tribal governmental functions such as education, health, police and fire protection, housing, economic development, etc.

Revenue raising for the support of its people and its governmental responsibilities is one of the most fundamental rights and responsibilities of a sovereign. On our reservation, like many others throughout the country, revenue raising is not an easy task. Without the means to raise sufficient revenue, our tribe's ability to become self-sufficient and less dependent upon federal financial support would be thwarted. Through our bingo operation, we have managed to generate revenue to fund social welfare programs, provide much-needed employment for our tribal members and, most importantly, provide us with capital with which to plan longer-term economic development possibilities on our reservation.

In much the same way many states throughout the country are using revenue from state-run lotteries and other legally permissible gaming activities to subsidize social welfare programs and develop state resources. Indian tribal sovereigns should, in all fairness, have the opportunity to do likewise on their reservations.

The Menominee Tribe urges this Committee and the Congress to strongly reaffirm the long-established principles of tribal sovereignty which are put at risk by the efforts of some states to deny tribes equal opportunity to operate their own gaming enterprises. Sovereignty is best expressed by a meaningful policy of self-determination, a policy to which the current Administration has committed itself. The Congress also has, for many years and in many ways, actively furthered tribal self-determination, and we are extremely grateful for this support. We ask you to do so again. With regard to the right to operate tribal bingo, we believe this policy is best pursued by passage of H.R. 1920.

I appreciate the opportunity to express my views on behalf of the Menominee Tribe on this most important issue.

Menominee Indian Tribe of Wisconsin

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Keshena, Wisconsin 54135

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July 11, 1986

The Honorable Mark Andrews, Chairman
US Senate Select Committee on Indian Affairs
United States Senate
Washington, D.C. 20510

Mr. Chairman:

Unfortunately, upon my return to the Reservation, I was hospitalized at the St. Vincent Hospital in Green Bay. After surgery, I was discharged on July 3. As a result, I have not put together all the information that I would like to have submitted to your committee. Hopefully, other organizations have written in support of the Menominee Bingo operation. I was able to contact the Menominee County Board of Supervisors and the Menominee Town Board and requested them to consider supporting our position. I also was able to contact another civic organization by the name of the Legend Lake Property Owner's Association. I am hopeful that others have also written in supporting our position.

As a matter of clarification, when I referred to the Oneida Tribe, a short distance from our Reservation, the point that I was trying to impress was that without Bingo as we now operate the Oneidas would never have been able to develop those facilities that have contributed so much to promoting the economy of the Oneida Tribe. They, in turn, would not have been able to consider busing people over to the Menominee Reservation to enjoy white-water rafting. We, on the other hand, would probably not have been able to initiate the white-water rafting program, even though at the present time it is on a small scale, without the money and funding received from the Menominee Tribal Bingo operations. The point that I was trying to make is that Indian Bingo assisted the Oneidas and it has also assisted the Menominee Tribe, and without Indian Bingo, neither Tribe would have been able to move ahead.

Sincerely,

Gordon Dickie Sr

Gordon Dickie, Sr.
Tribal Chairman

Sheriff Richard Germond
President
Adrian, Michigan

L. Cary Bittick
Executive Director
Alexandria, Virginia

NATIONAL SHERIFFS' ASSOCIATION
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Sheriff Merrill Greathouse
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Chicago, Illinois

Sheriff Louis Gianoli
Immediate Past President
Wausau, Wisconsin

Sheriff Patrick Hogan
Immediate Past President
Hartford, Connecticut

Courtney A. Evans
General Counsel
Washington, DC

PREPARED STATEMENT OF

JOHN F. DUFFY
SHERIFF OF SAN DIEGO COUNTY, CALIFORNIA
AND
CHAIRMAN OF THE NATIONAL SHERIFFS' ASSOCIATION'S
LAW AND LEGISLATIVE COMMITTEE

BOARD OF DIRECTORS

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Port Allen, Louisiana

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Oregon, Illinois

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Greenville, South Carolina

Sheriff Dale Carson
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***Sheriff L. G. [illegible]**
Greenwood, South Carolina

Sheriff John Duffy
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Fort Wayne, Indiana

Sheriff Ken [illegible]
Albany, Oregon

Sheriff Bill Hutson
Marietta, Georgia

***Sheriff [illegible]**
[illegible], Ohio

Sheriff Philip K. [illegible]
Cambridge, Maryland

Sheriff [illegible]
[illegible], Wisconsin

Sheriff [illegible]
Newport, Vermont

***Sheriff Frank [illegible]**
Beaver, Pennsylvania

***Sheriff [illegible]**
Nevada, Iowa

Sheriff Fate Thomas
Nashville, Tennessee

Sheriff [illegible]
Pueblo, Colorado

Sheriff Ralph Tyson
Greenville, North Carolina

***Sheriff Charles [illegible]**
Rochester, Minnesota

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Sheriff Richard Wille
West Palm Beach, Florida

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*Member of the
Executive Committee

Thank you very much for the opportunity to appear before you in response to your concerns about Sheriffs' problems with gambling on Indian reservations.

Reservation gambling, particularly bingo, has become a major concern for local, state and federal law enforcement and has impacted adversely on both Indian and non-Indian citizens.

California, as I am sure you are aware, is what is known as a Public Law 280 State, unlike other States such as Arizona where criminal law enforcement is not the responsibility of state and local agencies on Indian land.

Thu enactment of Public Law 280 in 1953 provided that all criminal laws of California and San Diego County were as applicable on an Indian reservation as in any other part of San Diego County. What this means is that beginning in 1953, the FBI no longer enforced federal criminal law on 117 reservations in California, 19 of which are in my County of San Diego. The federal statutes and the federal officers were replaced by state statutes, county ordinances and deputy sheriffs. Even though there have been a few federal court tests involving such things as the authority of deputy sheriffs on Indian reservations and the applicability of certain county ordinances which provide for criminal sanctions for violating such things as our public dance hall ordinance, the transition went smoothly.

For many years it has been the expectation of United States citizens that laws are applied equally throughout the country and that they are enforced equally. All of that changed with the advent of what the media calls, "Indian Bingo". I know that in 1953, the United States Congress did not foresee and did not intend that the conduct of gambling operations, which would result in the immediate arrest of the operators if committed anywhere else in California, would be not only tolerated but actually promoted by the Bureau of Indian Affairs and Secretary of the Interior if conducted on Indian reservations. However, that is exactly where we are today. If a local Catholic church or an Elk's Club or a mobile homeowners' association conducted bingo operations in the same manner as profiteering companies under contract with tribal councils now conduct them on 26 separate reservations in California, a Catholic priest, an Exalted Ruler or a mobile homeowners' board of directors would be prosecuted for criminal law violations.

I also do not believe that the Ninth Circuit Court of Appeals, in its 1982 reversal of a federal court decision in the Southern District of California, entitled "Barona Group of Capitan Grande Band of Mission Indians v. John F. Duffy, Sheriff of San Diego County", anticipated that they were creating a potential of 117 separate enclaves in California, 19 in San Diego County, where illegal gambling by profiteering corporations would be sanctioned. Nor do I believe they still understand the problem as evidenced by their 1986 decision (Cabazon Band v. Riverside County) to uphold their 1982 decision (Barona v. Duffy) on allowing Indian gambling.

This problem has now grown in many other states such as Washington, Arizona and New Mexico. Some of these tribes are already discussing the possibility of introducing horse racing, dog racing, Jai Alai and off-track betting. We are talking about a growing, unregulated national problem.

The Barona decision encourages completely unregulated illegal gambling by non-Indian profiteers who use judicially established legal loopholes in Public Law 280 to expand activities that are illegal in every other place in the State except on Indian reservations. The essence of the Barona case was that the Ninth Circuit said the California's statute on bingo was a civil/regulatory and not a criminal/prohibitory statute. This decision was exactly opposite from the findings of the federal trial court judge. As a result, high stakes bingo and other illegal forms of bingo are being operated by quickly formed profit-making companies who have "sweetheart" contracts with Indian tribal councils.

Since the Barona decision, 25 other tribal councils in California have enacted a so-called bingo regulatory ordinance, four of which are in my county. Barona was in operation until May 1986 when they closed their doors following the indictment of members of the management company for skimming thousands of dollars from the operation. A Texas-based company is negotiating a contract to run bingo and other forms of gambling on yet another reservation in my county.

All of these tribal councils have signed long-term contracts with different profit-making companies who operate high stakes bingo games that are not permitted anywhere except on Indian reservations. These unrestricted games have lured thousands of people to the Indian reservations and are generating millions of dollars of profits to these corporations.

Indian gambling operations are not subject to any control whatsoever and have great potential to be used for skimming, laundering of illegal funds and many other activities which are best avoided in such states as Nevada and New Jersey by regulating the gambling enterprise through state gambling commissions.

In California, the Ninth Circuit Court has allowed illegal gambling to take place on Indian reservations without regulation. Prior to their closing, the management company at the Barona Reservation said they were grossing $1 million-per-month in cash.

They were in operation since 1982 and the estimated gross income was in excess of $35 million dollars; however, there was no visible improvement to the Indians' status. In fact, some of the homes on the Barona Reservation still do not have running water. The management company claimed that all the money went to pay for prizes and payroll expenses. The dividends declared by the company were minuscule in comparison to the amount of cash taken in. The management company blamed their closure on the fact that the Indians would not allow them to bring in outside stockholders to bolster the bingo operation. The Barona Indians found that these stockholders were members of the management company which currently operates Sycuan Indian bingo in competition with Barona. This management company is known publicly as having been the object of law suits in other States where they conducted reservation bingo. In addition, we have confirmed information that this management company has been tied to several known organized crime figures.

As predicted, when the Ninth Circuit Court opened the door, these operators in San Diego County have expanded beyond traditional bingo into other forms of gambling. In August 1984, at the Sycuan Reservation, the management company began operating a casino-style lounge, featuring variations of illegal blackjack and keno, which they called "Bingojack" and "Bingo Horseracing". The operation was raided by deputies from my department who seized $4,400 in cash and three truckloads of gambling paraphernalia which looked as though it came from Las Vegas casinos. Twenty-one people were also arrested for state gambling law violations during the raid and evidence was found indicating that those operators were about to install and start playing illegal variations of roulette and slot machines. We had a virtual foot-race to the state courts to file criminal cases while the operators were running to the federal court to file for civil remedy of our seizure. The definition of bingo became a key issue and the trial court's favorable judgement is still under appeal in state courts.

With respect to the Barona Management Company, my deputies served search warrants and grand jury subpoenas simultaneously in San Diego County; Los Angeles County; Las Vegas, Nevada and Atlantic City, New Jersey following an investigation which revealed evidence of conspiracy and grand theft, more commonly known as "skimming". This activity involved the general manager of the management company using "shill" players to win large prizes of thousands of dollars and then secretly return the money to the managers. All the searches produced useful evidence and principal individuals, including an employee of an Atlantic City, New Jersey casino, who were involved in the Barona skimming operation.

On April 2, 1986, Stewart Siegel, the ex-general manager of the Barona operation, pled guilty to four counts of grand theft following his indictment by the San Diego County Grand Jury and became a cooperative witness. As a result, one other person employed by the management company has been charged with three counts of grand theft. This case will be heard July 10, 1986. By his own admission, Mr. Siegel has known ties to organized crime figures in Las Vegas, New York and New Jersey. Several other members of the Barona management company are also known to have these ties. In fact, an associate of a Los Angeles organized crime family was generally believed to be a hidden owner in the management company.

Mr. Siegel is also being investigated for involvement in two professional contract murders in Los Angeles with possible relationship to the Barona gambling operation.

Louis Cordileone, the boyfriend of one of the "shill" players in the Barona case, has been charged with subornation of perjury, where it is charged that he instructed the "shill" to lie to the County Grand Jury regarding their part in the operation. Cordileone is also known to have organized crime ties. His court date is July 15, 1986, and he has employed Nicholas DePento, a well-known San Diego lawyer who represents organized crime figures, as his attorney.

Recently we learned that members of the Barona tribal council were "wined and dined" by persons who are organized crime figures in San Diego County. These persons, using a "front" from Las Vegas, promised to either let the tribe run their own bingo or they would run it for them. Another group that has approached the Barona tribal council has plans of building a theme park on the reservation which includes a western town and live shows, and wants to buy an adjacent ranch and lease it back to the Barona tribe for a paramilitary "survival game" area.

Without the Barona decision, the Indian lands would not be attractive to these outside groups. Knowing that gambling is a sure draw, many outside groups will be approaching other tribes in the country promising them untold riches. So far, most of the groups that have approached tribal councils have ties to criminal elements, even organized crime families.

Bingo games have resumed on the Rincon Indian Reservation in San Diego County. The President and sole stockholder, claims he put $50,000 of his own money into the operation and used a $200,000 loan from two investors whom he declines to identify.

Under the previous management company, Rincon Indians did not make any money and ended up in debt. The operator of that company claims he lost $800,000 himself in the operation; however it is generally believed they grossed $8 million dollars during the first year of operation.

Today, there are several bills before you relating to gambling on Indian land: H.R. 1920, S. 902, and the Administration's legislation. To Sheriffs who must enforce state and local gambling laws, the most satisfactory legislative proposal would require that all gambling activities on Indian land must be subject to state law and regulation. For example, if a State allowed bingo, bingo operations on Indian lands would be licensed and regulated by state bingo statutes; if a State allowed horse race gambling, gambling at race tracks on Indian lands would be licensed and regulated by the State's horse race gambling commission; and so on, with whatever form of gambling a State would allow. I realize this proposal is not in any of the legislation before you today, but I urge you to mark up a bill to that effect, because it is the only effective means of allowing Indian tribes to attempt to become less dependent on the federal government and still regulate gambling in a manner to keep organized crime interests from victimizing the Indians.

H.R. 1920 (Udall) is totally unacceptable to the Sheriffs of America because it will simply lock into law the unwise federal court decisions which put regulation of gambling on Indian lands outside of state control. In P.L. 280 States, the effect of this is to allow gambling on Indian reservations to go totally unregulated -- P.L. 280 removes the federal responsibility for criminal law enforcement and the court decision bars state and local efforts. To think that gambling on Indian land can be effectively regulated from Washington, D.C. by a federal agency or commission as proposed by H.R. 1920 is totally ludicrous.

S. 902 (DeConcini) appears to take about the same approach as H.R. 1920 and, therefore, is also unacceptable to the Sheriffs who must not only keep organized criminal enterprises out of their counties but also enforce laws equally and fairly throughout their counties.

The Administration's Indian gambling legislation is an improvement over H.R. 1920 and S. 902, but still compromises the Justice Department's original position supporting states' rights to regulate Indian gambling. The legislation still contains the artificial and meaningless breakout of gambling into three classes -- ceremonial, bingo, and other forms. Despite what the architects of that bill, as well as H.R. 1920 and S. 902, would have us believe, gambling is gambling is gambling. The problem is unregulated gambling! The only useful classification of gambling in this case, if there is any, is ceremonial versus non-ceremonial (bingo, etc.). Perhaps a federal commission should be created to regulate ceremonial gambling and insure that it remains true to sacred Indian tradition. But non-ceremonial gambling, especially in P.L. 280 States, should be State licensed and regulated.

In the final analysis, Senators, not one of the three bills is acceptable to the 3,100 independently elected Sheriffs of America. What would be acceptable at the minimum is as follows:

1. In P.L. 280 States, such as California, Florida, etc., State and local authorities should license and regulate all non-ceremonial gambling on Indian lands just as would be done on non-Indian lands in those States. This is consistent with the fact that the Federal Government has already delegated criminal law enforcement on Indian laws to the states.

2. If the Federal Government wants to treat other states differently, in non-P.L. 280 States such as Arizona, New Mexico, etc., federal authorities could license and regulate non-ceremonial gambling just as it does other matters on Indian lands in those States. This would be consistent with the fact that the Federal Government has not delegated criminal law enforcement to those states.

3. Any gambling associated with traditional Indian ceremonies could be monitored and, if necessary, regulated by the Federal Bureau of Indian Affairs or by a Federal commission. I do not believe the Bureau of Indian Affairs is now, or ever will be, capable of effectively controlling incursions of organized crime and profiteers who would victimize the American Indian.

> The record clearly shows they have long been part of the problem, not the solution, for the native Americans in this country.

An alternative approach, in view of the decision by the U. S. Supreme Court just last week (June 9th) to hear the State of California's appeal from the Ninth Circuit Court's decision on the Cabazon Band v. Riverside County case, is to hold all legislative action until the Supreme Court can consider the vital issue of conflicting interests. Following the Ninth Circuit's decision on Cabazon Band v. Riverside County, California made a "direct appeal" to the Supreme Court to hear the case next session. Nineteen States -- including Alaska, Florida, North Dakota, Oklahoma and South Dakota -- have joined California as amici curiae in the appeal. Unfortunately, the Court's decision won't be made until 1987 at the earliest. Consequently, because unregulated Indian gambling will get more time to spread throughout the nation, Sheriffs do not prefer this course of action.

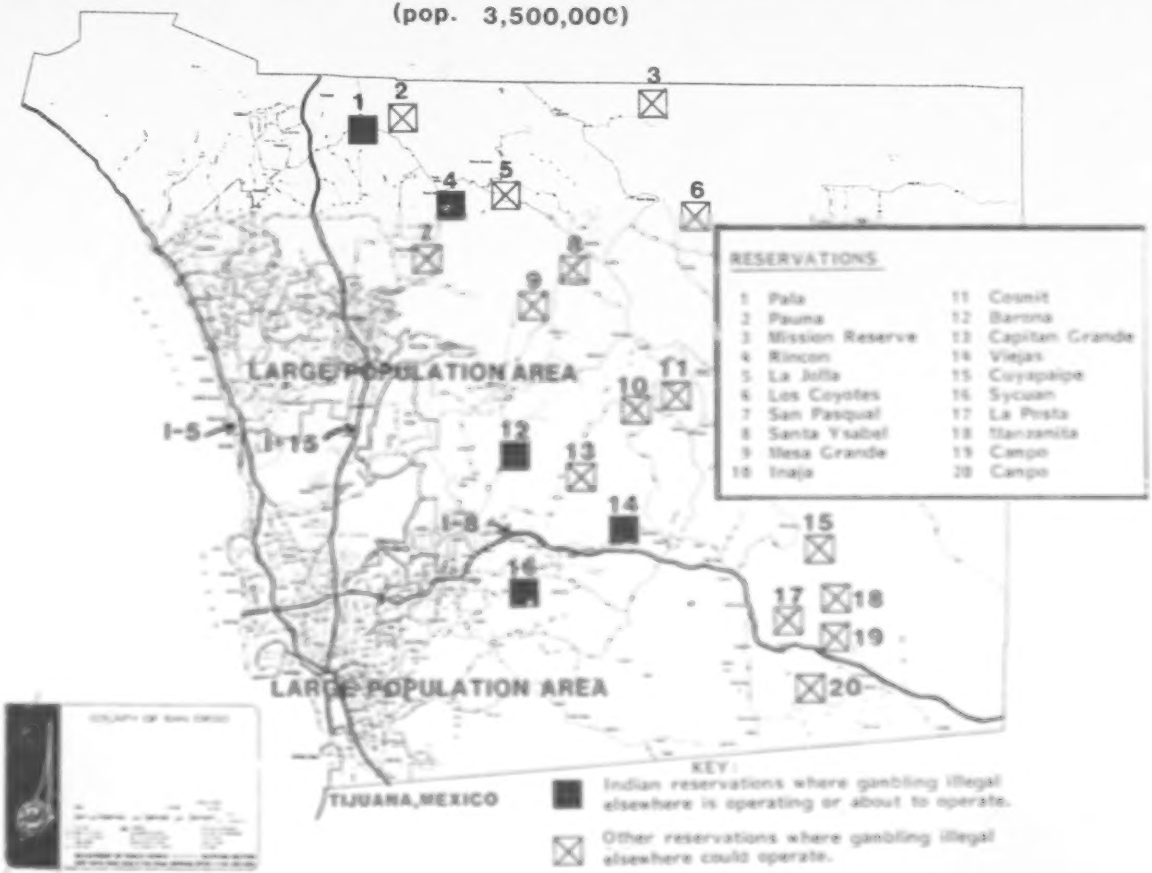
The matter of gambling on Indian land desperately needs our attention before these operations spread to such places as Palm Springs in Riverside County, California which is a checkerboard of Indian and non-Indian lands; where some luxury hotels are actually already located on Indian lands. It does not take much imagination, if these unscrupulous profiteers are successful in expanding bingo to casino-type games, like what was attempted at Sycuan in my county, in these already existing hotels, to see Palm Springs become a Las Vegas. The proliferation of Indian land enclaves, throughout the country, where multimillion dollar Indian gambling differs from Las Vegas and Atlantic City casinos only by the fact that there is no effective regulating agency to protect the public.

I urge you to consider my firsthand knowledge of the potential danger to this country posed by the rapid expansion of a completely unregulated gambling industry which is now operating on over 100 Indian reservations within 30 or more states. I also urge you to consider carefully how tribal councils are corrupted and native American Indians are cheated and victimized by unscrupulous profiteers with organized crime connections. Nothing about the present situation helps the American Indian.

Thank you for providing me the opportunity to provide you with accurate firsthand experience and knowledge that should assist you in dealing with this subject that is of great concern to law enforcement throughout the nation. The National Sheriffs' Association looks now to the Congress to repair a major disability created by the courts. Until you do, we can expect the federal interstate highways will continue to take our local citizens to federal gambling casinos on federal land which has been made possible by federal judges interpreting federal law and federal law enforcement agencies doing nothing at all. We need your help!

INDIAN GAMBLING SITES SERVING SAN DIEGO, CALIFORNIA/TIJUANA, MEXICO

(pop. 3,500,000)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17
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19
20
LARGE POPULATION AREA
LARGE POPULATION AREA
I-5
I-15
I-8
TIJUANA, MEXICO
RESERVATIONS
1 Pala
2 Pauma
3 Mission Reserve
4 Rincon
5 La Jolla
6 Los Coyotes
7 San Pasqual
8 Santa Ysabel
9 Mesa Grande
10 Inaja
11 Cosmit
12 Barona
13 Capitan Grande
14 Viejas
15 Cuyapaipe
16 Sycuan
17 La Posta
18 Manzanita
19 Campo
20 Campo
KEY:
■ Indian reservations where gambling illegal elsewhere is operating or about to operate.
☒ Other reservations where gambling illegal elsewhere could operate.
COUNTY OF SAN DIEGO

NATIONAL SHERIFFS' ASSOCIATION
1450 DUKE STREET • ALEXANDRIA, VIRGINIA 22314 • 703-836-7827

L. CARY BITTICK
EXECUTIVE DIRECTOR

RESOLUTION

Regulation of Illegal Indian Gambling

WHEREAS,

1. Unregulated Indian gambling presents a threat to the public welfare of the nation because it provides new havens for organized crime to operate in total disregard of state laws concerning gambling; and

2. Unregulated Indian gambling represents a threat to the welfare of the various Indian tribes because it may subject the tribes to the corrupting influences of organized crime; and

3. The states have traditionally regulated gambling, as they do liquor, and provide the best means of addressing the threats posed by unregulated Indian gambling;

THEREFORE, BE IT RESOLVED that the National Sheriffs' Association urges President Reagan and the Interior and Justice Departments to support the states in their litigation in the Federal courts to assert jurisdiction over Indian gambling; and

BE IT FURTHER RESOLVED that the National Sheriffs' Association urges Congress to recognize that state and local jurisdiction over gambling on Indian reservations is essential to state sovereignty and should not be taken over by the Federal government; and

BE IT FURTHER RESOLVED that the National Sheriffs' Association urges Congress to enact legislation to provide that the gambling laws and administrative regulations of the states, whether civil, regulatory, or criminal, as presently enacted or as they may be enacted, amended or revised shall be applicable to Indians and their nations, tribes, or bands and to all land owned by or held in trust for Indians and their nations, tribes, or bands, including without limitation regulations governing licensing, operation, conduct, promotion, administration, and disposition of proceeds from gambling as required under state law.

Adopted at a meeting of the Membership,
This 4th day of June, 1986
Reno, Nevada

PREPARED STATEMENT OF CHARLES BLACKWELL

Mr. Chairman and Members:

I welcome this opportunity to prerent this testimony concerning H.R. 1920, The Indian Gaming Regulatory Act, on behalf of the entire Chickasaw Nation. I am hopeful our testimony might be helpful to the Committee in their consideration of this bill.

The Chickasaw Nation joins with the many other tribes across the United States in affirming and protecting their sovereign rights and uninhibited progress toward self sufficiency. In this context, our Tribe supports the basic spirit and intent of The Indian Gaming Regulatory Act, H.R. 1920. There exists however, several provisions within the bill that concern the Chickasaw Nation.

A major concern relates to the provisions of Section 3. (a) which states in part:

"... Class II and III gaming regulated by this act shall be unlawful on any lands acquired by the Secretary, under existing authority, in the trust for the benefits of any Indian tribe after December 4, 1985, if such lands are located outside the boundaries of such tribes reservation...".

We clearly understand the intent of this provision; however, the eastern Oklahoma tribes, including the Five Civilized Tribes, have for many years pursued the recognition of original tribal bounderies as being synonymous with the term "Reservation".

Based on current policy within the Department of Interior there exists little difference as evidenced by the various government programs that require tribal reservations as prerequisites to program eligibility. The Five Civilized Tribes participate in these programs in relation to their original tribal boundaries over which they currently exercise Jurisdictional control.

The provision of Section 3 (a) is unclear as pertains to the term "reservation". It would appear that the preponderence of the bill's jurisdictional unit is defined in terms of "Indian lands" Section 19 (3):

"...(3)"Indian lands" means--
(i) all lands within the limits of any reservation; and
(ii) any lands title to which is either held in trust by the United States for the benefit of any Indian tribe or individual or which is held by any Indian tribe or individual subject to a restriction by the United States against alienation over which an Indian tribe exercises governmental power...".

The term "Reservation" and "Indian lands" as defined in this act does not provide for those eastern Oklahoma tribes who's jurisdictional areas are defined by the original tribal boundaries. We suggest that the application of the term "Reservation" in Section 3 (a) is unclear as pertain to eastern Oklahoma tribes. To clarify this matter, we recommend inclusion of the wording "or in the case of Oklahoma tribes, their former jurisdictional and/or reservation boundaries in Oklahoma."

An additional concern with the provisions of H.R 1920, centers around the composition of the Commission, Section 5 (b):

"...(b) The Commission shall be composed of eight members as follows:

(A) a Chairman who shall serve full-time and who shall be appointed by, and serve at the pleasure of, the Secretary;
(B) a member to be selected by the Attorney General and appointed by the Secretary;
(C) five members, at least three of whom shall be enrolled-members of Federally recognized tribes, to be appointed by the Secretary from a list of not less than ten nor more than twenty candidates submitted and approved by a majority of the tribes then engaged in or regulating gaming activities; and
(D) one member appointed by the Secretary, who shall consult with appropriate organizations or entities, who shall represent the interests of the states;..."

As presently constituted the commission could be dominated by non-Indian membership. I am inclined to ask if it would be fair or realistic to subject the tribes' gaming activities to a Commission consisting of less than a majority of Indian members. This would appear to violate the intent of this gaming act.

We suggest that Section 5 (b) (C) as reads:

> "...(C) five members, at least three of whom shall be enrolled-members of Federally recognized tribes, to be appointed by the Secretary from a list of not less than ten nor more than twenty candidates submitted and approved by a majority of the tribes then engaged in or regulating gaming activities; and..."

Be change to read:

> "...(C) five members, all of whom shall be enrolled-members of Federally recognized tribes, to be appointed by the Secretary from a list of not less than ten nor more than twenty candidates submitted and approved by a majority of the tribes then engaged in or regulating gaming activities; and..."

Mr. Chairman, The Chickasaw Nation recognizes the need for a Federal Indian Gaming Regulatory Act to resolve the legal uncertainties with gaming activities on "Indian land". We urge the committee to enact legislation that will preserve the sovereign right of the Tribes to conduct gaming activities within the parameters of this act. Mr. Chairman, we would support H.R. 1920 if amended as we suggest.

PREPARED STATEMENT OF GLENN M. FELDMAN

Mr. Chairman and Members of the Committee:

My name is Glenn Feldman. I am an attorney with the law firm of O'Connor, Cavanagh, Anderson, Westover, Killingsworth & Beshears of Phoenix, Arizona. My practice is devoted almost exclusively to the representation of Indian tribes and tribal organizations, including several that are presently engaged in gaming activities. In addition, I have been involved in extensive federal court litigation for more than five and one-half years attempting to protect the right of tribes to operate bingo and similar gaming enterprises. I am appearing here today on behalf of the Cabazon and Viejas Bands of Mission Indians of southern California.

As the testimony before this Committee will demonstrate, gaming activities have become increasingly important to tribal governments in recent years. The cut-back in federal funds, together with the general inability of tribes to attract other forms of economic development to their reservations, have required that tribes turn to those revenue sources available to them. For many, this has meant tribally conducted bingo games and, in a few instances, other limited forms of gaming.

This development in Indian Country has, in turn, generated an unwarranted degree of opposition from state Attorneys General and other local law enforcement agencies, who would deny tribal governments the right to operate these enterprises. In my view, this opposition is hypocritical in the extreme. At the same time that these state representatives are preaching about the evils of tribal gaming, the states themselves are rapidly expanding the number and type of state-run gambling activities for the purpose of generating their own revenues. As we are all aware, the number of state-sponsored lotteries, numbers games, race tracks, off-track betting facilities, and proposals for casino gambling have increased dramatically in recent years. As far as many of these states are apparently concerned, gambling is a positive factor when the revenues go to fund state programs, but these same activities become dangerous and unacceptable when conducted by tribal governments.

The argument most often advanced by the states is that tribal gaming activities must be prohibited because they offer the potential for organized crime infiltration. The states' expressed concern about possible criminal involvement is a legitimate one, but it ignores the fact that the tribes and the federal government also share a strong interest in keeping crooks and con men out of tribal gaming activities. Both the federal and tribal governments have substantial legal resources available to them to adequately deal with the alleged "potential" for criminal infiltration. And the passage of regulatory legislation such as H.R.1920 or S.902 would greatly add to that arsenal.

Turning to the specific legislation now before the Committee, I would offer only a few brief comments. First, I would associate myself with the position outlined here today by Charles Blackwell on some of the specific recommendations he has made concerning H.R.1920. Although that legislation is generally satisfactory with respect to protecting tribal bingo activities, with certain minor revisions as proposed by Mr. Blackwell, H.R.1920 deals too harshly with Class 3 gaming by imposing a blanket 4-year moratorium on all such activities, with only a limited grandfather provision.

This total prohibition does not take into account the wide variety of these activities and the fact that not all Class 3 gambling activities are necessarily regulated by the states. For example, in California certain forms of poker are lawful under state law, and more than 400 legal card rooms are now operating throughout the state where these games are played. The state does not regulate these activities in any substantial way; it merely requires the registration of card room owners and operators. Yet, even this innocuous and widespread form of gaming would be denied to California Indian tribes under the Class 3 moratorium included in H.R.1920. While I do not personally believe that any such prohibition is necessary, if a legislative moratorium is to be enacted, I would strongly urge that it not treat all Class 3 gaming the same way. Those forms of gaming that are generally permitted under state law and not extensively regulated by the state should be available to Indian tribes, as they are to all others within the state. To the extent that the states impose minimal registration or background check requirements, these functions could easily be performed by the proposed National Indian Gambling Commission.

Finally, I would like to conclude with a brief comment concerning the ongoing litigation over tribal gaming activities. Since 1981, at least 8 federal courts have upheld the right of tribes to operate bingo and related gaming activities on their reservations. Last week, the Supreme Court agreed to review the most recent of these decisions -- Cabazon Band of Mission Indians v. County of Riverside, California -- a case in which I have been involved for more than five and one-half years. If the Court renders a decision on the merits, and it is not certain that it will because of various procedural questions, that decision probably will not come for another year.

There will undoubtedly be witnesses here today who will urge the Committee to defer action on the pending legislation until the Supreme Court acts. I believe that would be a serious mistake and a disservice to the many tribes that are operating bingo today.

Federal Indian policy ought to be developed by Congress through the enactment of positive legislation; not left to the vagaries of judicial case law. As every lawyer in this room knows, judicial decisions -- even Supreme Court decisions -- never "finally" resolve an issue. Skillful attorneys can shade the facts or the law in their particular cases just enough to continue litigating issues, even after an adverse ruling in another case. So regardless of how the Supreme Court may rule, if it does at all, the issue of tribal gaming will continue to be litigated on a piecemeal basis, for years to come, at substantial cost to the affected tribes.

A far better approach, and one more consistent with Congress' plenary authority over Indian affairs, would be for this Committee to report out affirmative legislation statutorily protecting tribal gaming activities as a legitimate means of generating tribal revenues. Coupled with this protection would, of course, be that degree of federal regulation and oversight necessary to insure that these activities were conducted fairly and honestly, while at the same time recognizing the sovereign authority of the sponsoring tribal governments. Action of this type would represent a fair compromise between the concerns of the states that these games not offer a haven for criminals, while allowing the tribes to continue to generate desperately needed revenues to fund tribal programs and services.

Thank you for the opportunity to testify today. I would be happy to answer any questions that you may have.

PREPARED STATEMENT OF WILLIAM J. HOULE

MY NAME IS WILLIAM J. HOULE. I AM THE CHAIRMAN OF THE NATIONAL INDIAN GAMING ASSOCIATION AND THE TRIBAL CHAIRMAN OF THE FOND DU LAC BAND OF LAKE SUPERIOR CHIPPEWA INDIANS.

IN BEHALF OF THE ASSOCIATION, I WANT TO THANK THIS COMMITTEE FOR THE OPPORTUNITY TO PRESENT OUR VIEWS ON THE PENDING LEGISLATION THAT WOULD ESTABLISH FEDERAL STANDARDS AND REGULATIONS FOR THE CONDUCT OF GAMING ACTIVITIES ON INDIAN RESERVATIONS AND LANDS.

FIRST OF ALL, I WANT TO COMMEND THE SPONSORS OF THESE BILLS AND THE MEMBERS OF THIS COMMITTEE FOR RECOGNIZING AND ADDRESSING THE EXTREMELY SERIOUS ISSUES RAISED BY THIS LEGISLATION. THE NATIONAL INDIAN GAMING ASSOCIATION PLEDGES ITS BEST EFFORT IN WORKING WITH THIS COMMITTEE AND ITS STAFF TO ENACT APPROPRIATE LEGISLATION SO THAT EVERYONE INVOLVED WILL HAVE THE GUIDANCE NECESSARY TO PROCEED WITH PARTICIPATING IN PLANNED OPERATIONS AND IN ORDER THAT TRIBES MAY AVAIL THEMSELVES OF FEDERAL PROTECTECTION.

SINCE THE FAVORABLE 1982 5th CIRCUIT CASE OF SEMINOLE VS. BUTTERWORTH, MANY INDIAN TRIBES HAVE TURNED TO INDIAN GAMING AS A SOURCE OF REVENUE FOR TRIBAL GOVERNMENT OPERATIONS AND PROGRAMS. LIKE MANY OTHERS, INDIAN TRIBES ARE FACING TIMES OF SEVERE ECONOMIC HARDSHIPS AND THESE DIFFICULTIES ARE INCREASED BY FEDERAL FINANCIAL CUTBACKS TO TRIBES, STATES AND LOCAL GOVERNMENTS. MANY TRIBES DO NOT HAVE THE INFRASTRUCTURE OR RESOURCES TO ATTRACT INDUSTRY AND

THEY HAVE TURNED TO GAMING AS A WAY TO CLOSE THE INCREASING GAP BETWEEN TRIBAL RESOURCES AND TRIBAL NEEDS.

GAMING ENTERPRISES HAVE BEEN A SIGNIFICANT SOURCE OF REVENUE AND EMPLOYMENT OPPORTUNITY FOR INDIAN TRIBES. SOME TRIBES HAVE REDUCED THEIR UNEMPLOYMENT FROM OVER 80% TO 5 OR 10%. TRIBES HAVE USED SUCH REVENUE FOR HEALTH CLINICS, ROADS, SCHOLARSHIPS, AND NUMEROUS OTHER ECONOMIC, GOVERNMENTAL AND SOCIAL EFFORTS. WE SUPPORT THIS EFFORT TO STRENGTHEN TRIBAL ECONOMIC SELF-SUFFICIENCY.

AS YOU WELL KNOW, THE FEDERAL GOVERNMENT HAS ALWAYS HAD A SPECIAL RELATIONSHIP WITH INDIAN PEOPLES OF THIS COUNTRY. IN THE CONTEXT OF THAT RELATIONSHIP, THE UNITED STATES HAS SOUGHT TO FOSTER AND SUPPORTED TRIBAL SELF-GOVERNMENT, SELF-DETERMINATION AND ECONOMIC INDEPENDENCE. THIS POLICY WAS CLEARLY ARTICULATED IN THE NIXON ADMINISTRATION AND WAS REAFFIRMED BY PRESIDENT REAGAN IN HIS POLICY STATEMENT ON INDIAN AFFAIRS ISSUED IN 1981. THE U.S. CONGRESS HAS LIKEWISE ACTED BY PASSING SUCH LEGISLATION WHICH AFFORDS TRIBES THE SAME TREATMENT AS STATES WITH RESPECT TO TAX EXEMPT OBLIGATIONS AND OTHER MATTERS AS CONTAINED IN THE INDIAN GOVERNMENTAL TAX STATUS ACT OF 1982. FURTHERMORE, CONGRESS HAS IMPLEMENTED THE POLICY OF SELF-DETERMINATION THROUGH THE INDIAN SELF-DETERMINATION ACT, THE INDIAN FINANCE ACT AND OTHER SUCH LEGISLATION. WE SEE NO REASON WHY THAT POLICY SHOULD FAIL NOW WHEN IT COMES TO GAMING ON INDIAN RESERVATIONS AND LANDS. IT IS ESSENTIAL THAT THE LEGISLATION CURRENTLY BEING CONSIDERED BY THIS COMMITTEE FOR THE PURPOSE OF REGULATING GAMING ACTIVITIES ON INDIAN LANDS COME FROM

A PERSPECTIVE THAT WILL ENCOURAGE THAT CONTINUED GROWTH OF THE LEGITIMATE ECONOMIC ACTIVITIES FOR TRIBES, EXCLUSIVE OF STATE JURISDICTION. WHILE THE STATE AND FEDERAL GOVERNMENT HAVE A LEGITIMATE CONCERN TO INSURE THAT INDIAN RESERVATIONS WITH GAMING ACTIVITIES ARE FREE FROM ORGANIZED CRIME AND OTHER UNDESIRABLE ELEMENTS - A CONCERN WHICH IS ALSO SHARED BY ALL INDIAN PEOPLE - THE CONTROL OVER THE REGULATORY PROCESS MUST REMAIN WITH THE FEDERAL AND TRIBAL GOVERNMENT AND NOT WITH THE STATE.

THE NATIONAL INDIAN GAMING ASSOCIATION WAS FORMED TO REPRESENT THE INTERESTS OF FEDERALLY RECOGNIZED INDIAN GOVERNMENTS THAT REGULATE AND CONDUCT GAMING ENTERPRISES IN INDIAN COUNTRY. THE ASSOCIATION HAS CONSULTED WITH THE GAMING TRIBES, THE NATIONAL CONGRESS OF AMERICAN INDIANS AND THE NATIONAL TRIBAL CHAIRMANS ASSOCIATION, WHO HAVE JOINED TO PROTECT THESE VALUABLE SOURCES OF REVENUE FROM UNWARRANTED AND UNINFORMED ATTACKS BY OPPONENTS OF INDIAN SELF-SUFFICIENCY AND DETERMINATION. THE ASSOCIATION SUPPORTS H.R. 1920 AS PASSED BY THE HOUSE OF REPRESENTATIVES AS IT COMPREHENSIVELY ADDRESSES THE INTERESTS OF TRIBES, STATES AND THE FEDERAL GOVERNMENT.

THE HOUSE, ON APRIL 21, 1986 PASSED H.R. 1920 WHICH IS SIMILAR TO S. 902 IN THAT IT ALSO ESTABLISHES A FEDERAL VEHICLE WHOSE PURPOSE IS THE OVERSIGHT OF GAMING ON INDIAN LANDS. THIS LEGISLATION WAS FULLY SUPPORTED BY THE NATIONAL INDIAN GAMING ASSOCIATION, THE NATIONAL CONGRESS OF AMERICAN INDIANS AND THE NATIONAL TRIBAL CHAIRMANS ASSOCIATION. THESE BILLS MAINTAIN INDIAN TRIBES' RIGHT TO SELF-GOVERNMENT

AS CALLED FOR BY THE COURTS, WHILE PROVIDING FEDERAL REGULATION TO ENSURE THAT SUCH ACTIVITY IS CARRIED OUT IN A CONSISTENT AND PROPER FASHION.

THE ADMINISTRATION HAS ALSO SUBMITTED A BILL TO THE SENATE AND IS CITED AS THE "INDIAN GAMING AUTHORIZATION REGULATION ACT OF 1986". UPON REVIEW OF THE ADMINISTRATION'S BILL THE NATIONAL INDIAN GAMING ASSOCIATION IS LEFT WITH NO ALTERNATIVE BUT TO TOTALLY OPPOSE THIS BILL. THIS BILL DOES NOT ACCURATELY REPRESENT THE EXISTING LAW, INFRINGES UPON THE TRIBAL GOVERNMENT"S JURISDICTIONAL AUTHORITIES AND DOES NOT ALLOW FOR AN OPPORTUNITY OF TRIBAL GOVERNMENT EXERCISE OF DISCRETION IN REGULATING THESE ACTIVITIES ON RESERVATIONS. THE BILL SUBJECTS TRIBAL GOVERNMENT TO STATE CONTROL AIMED AT LIMITING INDIAN GAMING ON RESERVATIONS.

THE RIGHRTS OF SELF-GOVERNMENT OF INDIAN TRIBES IS CLEARLY DEFINED IN THE CIVIL RIGHTS ACT OF 1968 AND PUBLIC LAW 280 P.L. 83-280 AUTHORIZES THE APPLICATION OF STATE "CRIMINAL/PROHIBITING" LAWS ON INDIAN RESERVATIONS, BUT NOT "CIVIL/REGULATORY" LAWS. BORTH S. 902 AND H.R. 1920 ARE CONSISTENT WITH FEDERAL STATUTES, CASE LAW, AND, CONGRESSIONAL POLICY, THE ADMINISTRATION BILL IS NOT. THE ADMINISTRATION BILL WOULD ESTABLISH BAD PRECEDENT FOR STATE REGULATION OF INDIAN AFFAIRS, THEREBY CONTRADICTING ACS OF CONGRESS AND THE COURTS. THE NATIONAL INDIAN GAMING ASSOCIATION AND ITS MEMBER TRIBES ASK YOUR SUPPORT OF OUR EFFORTS TO ASSURE PROTECTION OF INDIAN GAMING ON RESERVATIONS, AND OPPOSE ALL EFFORTS TO LIMIT TRIBAL SOVEREIGNTY.

MR. CHAIRMAN, WHILE WE SUPPORT THE HOUSE PASSED BILL H.R. 1920, WE FEEL THERE ARE SOME AREAS THAT NEED TO BE IMPROVED UPON AND WE WOULD LIKE TO SUBMIT A LIST OF OUR RECOMMENDATIONS FOR YOUR CONSIDERATION.

Thank you,

MEMORANDUM

TO: Senate Select Committee on Indian Affairs
FROM: National Indian Gaming Association
DATE: June 17, 1986
RE: Recommendations and suggestions to H.R. 1920

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1. Require chairman of the Commission to be confirmed by the Senate and appointed by the President.

2. Grandfather all existing approved management contracts.

3. Require that no less than 50% of the annual budget of the Commission shall be derived from an assessment of not to exceed 1% centum of the gross revenues from each gaming activity regulated by this Act.

4. Specifically state that Class III gaming means, horse racing, dog racing, Jai Lai and Casinos.

5. Class II gaming shall include, except as defined in Class III, other forms of gaming which are not specifically prohibited by federal law and which are conducted within a state which does not as a matter of criminal law and public policy, prohibit such gaming.

6. H.R. 1920 fails to recognize the situation in Oklahoma where tribe reservation boundries have been extinguished for most purposes. To remedy the apparent oversight, we suggest that the following be added to Section 3(a):

> or with respect to lands situated within the State of Oklahoma, if such lands are either located outside the boundaries of such tribe's former reservation in Oklahoma, as defined by the Secretary of the Interior, or are not contiguous to real property presently held in trust by the United States for such tribe.

PREPARED STATEMENT OF PURCELL POWLESS

Presently there are three bills pending before the Senate. H.R. 1920, S. 902 and a bill proposed by the Reagan Administration. The Oneida Tribe is opposed to the Administration bill. The Oneida Tribe does, however, believe that H.R. 1920 and S. 902 represent the kind of federal legislation that nationally addresses the concerns raised.

The Oneida Tribe of Wisconsin has operated a Bingo Enterprise for ten years. As the attached fact sheet shows, it has grown into a very successful operation. The facts speak for themselves. The Oneida's have significantly reduced unemployment, supplemented Tribal programs and diversified economic development enterprises in the process. Of course, we are proud of this success and look upon it as a beginning of true self sufficiency and independence after too many years of dependence on the federal government. Since our bingo enterprise is such a valuable source of revenue, we have worked hard to protect it and to keep it an entertaining and honest game for our patrons.

In 1980, the Oneida Tribe's Bingo operation was challenged by the Wisconsin Bingo Control Board. Suit was filed in the Federal District Court in Madison by the Oneida Tribe. A Permanent Injunction was issued which enjoined the State of Wisconsin or any of its agencies or local governments from interfering with the bingo operation of the Oneida Tribe. The rationale for this decision was based upon the civil regulatory authority of the Oneida Tribe as a sovereign government. This has become known as the "civil/regulatory criminal/prohibitory" test used by several federal courts where the same issue has been raised. The Oneida Tribe has enjoyed good relations with the State of Wisconsin since then in this area and many other areas of goverence, as well. The other federal cases referred to are the Seminole case, Seminole Nation v. Butterworth, and the Cabazon case in California, Cabazon v. California.

The Oneida Tribe has closely monitored developments within the federal government which would change or effect its operation since 1982 when the United States Department of Justice first attempted to have regulatory jurisdiction over this activity granted to the states. That attempt was stopped by former Secretary of Interior, James Watt, who rightfully believed that federally recognized tribes engaged in such gaming activities should be consulted prior to the enactment of any legislation that would adversely effect their governing authority. While Secretary Watt has been criticized for many reasons, Indians considered his action a proper act of the Trustee protecting the governing authority of Indian Tribes from unwarranted interferences from any source. This, however, did not end the matter but rather extended it to the point where we now find it today.

The Oneida Tribe became a member of the National Indian Gaming Task Force in 1982. This Task Force was an ad hoc association of more than 60 federally recognized Tribes that were engaged in the conduct of gaming on their reservations. The overwhelming majority of these operations are bingo enterprises. Some of the operations are managed by consulting firms by contract with Tribes. Others, such as the Oneida Tribe, operate their own enterprises entirely. While it was in existence, the National Indian Gaming Task Force found that virtually all Tribes engaged in bingo did so pursuant to duly adopted Tribal ordinances or resolutions of the Tribe's governing body.

Since the Oneida Tribe has operated its Bingo enterprise, it has done so pursuant to its own ordinance. The Oneida Bingo Control Ordinance was enacted by the Oneida Business Committee and strictly regulates the enterprise. The ordinance specifies the manner in which the games are to be operated, the prize amounts, the number of occasions, who may be employed by the enterprise, how the money is to be handled and accounted for, and that all revenues are to be appropriated by the Tribal government for governmental purposes.

No individual person profits from the enterprise except by employement. The provisions of the Oneida Bingo Control Ordinance are strictly enforced. Thus, the Oneida operation has enjoyed a well deserved reputation for honesty and efficiency as well as success. It is for these and other reasons that the Oneida Tribe has vigorously worked to protect its Bingo enterprise.

The Oneida Tribe has been mindful of the rights and interests of other governments and the public which it serves by its Bingo operation. On many occasions, the Oneida Tribe has made generous contributions to local charities. The Tribe has also publicized the positive economic impact of its economic achievements on the local communities, including the construction of a 200 room hotel among other enterprises. Furthermore, the Oneida Tribe, with other Tribes in Wisconsin, has been able to cooperatively regulate the sale of cigarettes in Indian country to the mutual benefit of the State and Tribes.

These facts are presented to you so that you may consider the legislation now pending before you more fully. The Oneida Tribe has for more than two years sought to have passed federal legislation that would protect its operation. Presently, H.R. 1920, which was recently passed by the House of Representatives is before you. The Oneida Tribe, with others, worked hard to convince the Representatives that this legislation adequately addresses the concerns raised by various law enforcement agencies, state Attorneys General and others opposed to gaming conducted by Indian governments. H.R. 1920 balances the interests of federal, state and Tribal governments without undue interference on Tribes. While there are some provisions about which the Oneida Tribe has some concern, such as the centralization of too murch arbitrary power in the Chairman of the proposed Commission, the compositon of the Commission itself, assessments among other things, we feel that these may be adequately addressed as this Committee considers the bill.

We are, however, very concerned about the proposed bill known as the "Indian Gambling Authorization and Regulation Act of 1986", also referred to as the Administration bill.

The provisions of the Administration bill are antithetical to legitimate and recognized governing rights of Tribal governments. In view of the fact that the Committee has before it alternative legislation that is designed to better address the various interest mentioned above, and that H.R. 1920 was arrived at in consultation with Tribes affected, the Oneida Tribe urges you to reject the Gambling Authorization and Regulation Act of 1986. Specifically, the Administration bill would create an entirely new level of federal bureaucracy with which the Tribes would have to deal. The three person commission provided by this act would be political in nature as they would serve at the will of the Secretary of the Interior and the Attorney General and as a Commission have sweeping powers to interfere with Tribal gaming operations in a totally unprecedented manner. The Act provides for ruinous assessments from which there would be no meaningful review. Finally, if this Act were passed as it is presently drafted, it would open the door to further infringement of other presently recognized governmental rights of Tribes. If this Act is passed as written, virtually all Indian gaming operations would be rendered unprofitable and thus killed along with all the good work which is being done with these revenues. The indirect result will be increased dependence of Tribal governments and Indian people on local, state and federal resources. The passage of the Indian Gambling Authorization and Regulation Act of 1986 would be a step backward to the Termination Era of the 1950's and contradictory to the formal repudiation of House Concurrent Resolution 108 by President Reagan.

For the above states reason and the facts set forth, the Oneida Tribe of Wisconsin respectfully request your support for H.R. 1920 and urges your rejection of the Administration's "Indian Gambling Authorization and Regulation Act of 1986".

Thank you for your attention and support.

Respectfully Submitted,
ONEIDA TRIBE OF INDIANS OF WISCONSIN

PURCELL POWLESS, Chairman

PP/rp

Attachment (1)

ONEIDA BINGO
FACT SHEET
ONEIDA TRIBE OF INDIANS OF WISCONSIN - March 1986

NAME OF OPERATION: Oneida Bingo
LOCATION: 2110 Airport Drive, Green Bay, WI 54303 (Across from Green Bay's Austin Straubel Airport)
PHONE NUMBER: (414) 497-8118, WI Watts 1-800-472-4263
ONEIDA BINGO MANAGERS: Sandra Ninham, Alma Webster
DATE OF ORIGINATION: October 1976
NUMBER OF BINGO EMPLOYEES IN 1976: 10 1986 BINGO EMPLOYMENT: 122
FIRST YEAR'S ATTENDANCE: 8,000 1985 ATTENDANCE: 396,866
1976 TRIBAL BUDGET: $2,400,000 1986 TRIBAL BUDGET: $34,000,000
1976 TRIBAL EMPLOYMENT: 150 1986 TRIBAL EMPLOYMENT: 464
1976 UNEMPLOYMENT RATE: 40.1 1986 UNEMPLOYMENT RATE: 28.8
1976 TRIBAL RESERVATION POPULATION: 1,802 BROWN/OUTAGAMIE CO. 2,472
1986 TRIBAL RESERVATION POPULATION: 2,033 BROWN/OUTAGAMIE CO. 4,481

1985 ESTIMATE OF BINGO'S ECONOMIC IMPACT ON TRIBE: $8,000,00
RECIPIENT OF BINGO INCOME: Oneida Tribal Programs
TOTAL BINGO SALARIES: $1,427,356

1976 TRIBAL ECONOMIC IMPACT ON AREA: $7,200,000
1986 TRIBAL ECONOMIC IMPACT ON AREA: $100-Million - $170-Million

THE FOLLOWING PROGRAMS HAVE BEEN INITIATED AND ARE PRESENTLY FUNCTIONING BECAUSE OF BINGO REVENUES NOT AVAILABLE IN 1976 (all are at least partially funded by Bingo revenues:

Oneida 50 Bed Nursing Home (Serving Indian & Non-Indian)
Oneida Health Care Center & Pharmacy (Serving Indian & Non-Indian)
Oneida Day Care Center (Serving Indian & Non-Indian)
Oneida Head Start Program
Oneida Tribal School
Norbert Hill Center (houses Day Care, Head Start, Tribal School, Business Committee, Accounting, Job Training, Planning, Economic Development, Enrollment, Higher Education Program, Law Offices, Public Relations, Cannery, Conservation, Public Safety, Law Library, Computer Center)
Oneida Nation Museum
Oneida Printing Enterprise
Oneida One Stop (Grocery/Gas Station)
Oneida Industrial Park
Oneida Transit Authority
Oneida Maintenance Garage
Redstone Center & Other Elderly Housing
Oneida Civic (Recreation) Center (Serving Indian & Non-Indian)
Oneida Senior (Recreation) Center (Serving Indian & Non-Indian)
Oneida Housing Authority (264 units) (Serving Indian & Non-Indian)
Oneida Rodeway Inn ($10.5 Million 202 rooms, Hotel opening in June)
Domestic Abuse (Serving Indian & Non-Indian)
Alcohol and other Drug Abuse Prevention & Treatment (Serving Indian & Non-Indian)
Home Improvement Coordinator
TRAILS Youth Program (Serving Indian & Non-Indian)
USDA - Food Distribution (Serving Indian & Non-Indian)
Income Maintenance (Serving Indian & Non-Indian)
Indian Child Welfare
Community Library (Serving Indian & Non-Indian)

EXPENDITURES: Money earned by Tribal members is almost entirely spent off of the reservation. Only gasoline, cigarettes, and quick stop grocery items are available on the Reservation.

NATIONAL TRIBAL CHAIRMEN'S ASSOCIATION

818 18th Street, N.W., Suite 840, Washington, D.C. 20006

202/293-0031

PREPARED STATEMENT OF RAYMOND FIELD

NATIONAL TRIBAL CHAIRMEN'S ASSOCIATION
REPORT ON THE IMPACT OF INDIAN GAMING

I. INTRODUCTION

II. LEGISLATIVE CONTEXT

III. ISSUES IN INDIAN GAMING

- Summary
- Economic Benefits
- Social Benefits
- Problems

IV. TECHNICAL APPENDIX: SURVEY OF ECONOMIC IMPACT

- Intent of Research
- Methodology
- Analysis
- Conclusions

I. INTRODUCTION

"Gaming" is a catch-all phrase describing gambling. It could include such activities as casino-style card games, betting on dog and horse racing, dice games, and in some states, bingo.

The present discussion considers all forms of gaming on Indian reservations. For the most part, this involves tribally-controlled "high stakes" bingo games.

Indian gaming is currently an issue because the overwhelming success of tribally operated bingo games has evoked a major adverse response from special interest groups. Specifically, State governments have sought to regulate reservation gaming.

It is useful to put this issue in context. Indian tribes, under the doctrine of tribal sovereignty, have the right to home role on the reservation lands which they occupy. Only the Federal government may exercise regulatory jurisdiction over these activities. This right is embedded in Article III of the Constitution, and in the Commerce Clause.

The issue before this committee, then, is whether this congress will further abrogate Indian rights to economic self-determination by extending the legislative right to control this activity to State governments.

The current administration has served notice to all tribes that we must reduce our direct dependence on public support and become more self-sufficient. As President Reagan has stated:

> "It is important to the concept of self-government that tribes reduce their dependence on federal funds by providing a greater percentage of the cost of their self-government.."

This paper addresses the issue of gaming on Indian reservations. It discusses the economic benefits which accrue to the tribal community from gaming. While the argument of local economic development is compelling, it cannot supercede the central arguments against regulation of gaming: those of tribal sovereignty and self-determination.

II. LEGISLATIVE CONTEXT

The issue of bingo as an economic development strategy for financing tribal governments first arose in *Seminole Indian Tribe v. Butterworth*, decided by the United States Court of Appeals for the Fifth Circuit. In this case, the court held that states did not have regulatory jurisdiction over tribal bingo games.

In another Landmark case the Federal Court, in *Langley v. Ryder* upheld tribal authority to engage in gaming on the basis of tribal sovereignty.

The tribe's reaction to the Butterworth and Ryder cases has been swift. Many other tribes have moved to establish their own forms of gaming. Today, approximately 102 of the nation's 309 tribes are actively engaged in operating bingo halls. These tribes span over 20 states.

Test cases in other states are pending. The objections of states (many of which are themselves actively engaged in gambling) is that tribal governments are the sole beneficiaries of gaming revenue.

NTCA's position is that state regulation and state requirements of Indian gaming is inappropriate for two reasons: because it violates the principal of tribal sovereignty and because the economic benefit from Indian gaming can be a critical contribution to the reservation economy.

III. ISSUES IN INDIAN GAMING

Summary

Gaming on Indian Lands represents a significant opportunity for tribes to participate as equals in a booming leisure-time/service sector of the economy. Specific economic benefits include the following:

- Gaming is a potentially important source of revenues to support tribal governments
- Gaming has secondary impacts which provide a boost to the typically depressed tribal economy
- Gaming encourages entrepreneurship and the development of management expertise among tribal members
- Gaming provides a "seed industry" for skills training among Indian workers

In addition to these economic benefits, there are a number of less tangible social benefits which can be associated with gaming:

- Gaming provides an addition form of recreation on reservations
- Gaming provides an opportunity for Indians and non-Indians to interact in a benign, rather than confrontational manner

Individuals who support regulation of gaming have also cited a number of problems. This report responds to the following assertions:

- Indian gaming diverts resources from charities
- Indian gaming attracts organized crime
- Gaming undermines the ability of states to regulate gambling

Economic Benefits

- Gaming is a potentially important source of revenues to support tribal governments

In recent years, a growing number of states have used lotteries to raise revenues as an alternative to taxation. Indians, for the most part, have no tax base. Gaming on Indian lands gives tribes an opportunity to attract money from off-reservation players and to retain monies that on-reservation players would otherwise gamble away. These revenues support tribal governments and activities, reducing tribes' reliance on the Federal government.

- Gaming has secondary impacts which provide a boost to the typically depressed tribal economy

The attached economic analysis demonstrates that, in the tribes surveyed, each additional gaming job created leads to the creation of from five to ten service jobs. This kind of economic development is critical to reservation economies, which typically have an unemployment rate which is over twice that of the local economy. Investments in the provision of gaming services on Indian lands creates jobs and incomes which would not otherwise be available, paid for not out of the taxpayer's purse or the charitable instincts of society at large, but by willing players who purchase gaming as an entertainment service.

- Gaming encourages entrepreneurship and the development of management expertise among tribe members

Gaming operations are sophisticated businesses. They introduce new technology onto Indian lands, encouraging entrepreneurship and giving Indians incentives to organize in a business-like fashion.

- Gaming provides a "seed industry" for skills training among Indian workers

While the incomes paid to gaming workers may not seem significant by many standards (our survey indicates that wages range from $3.35 - $5.00 hourly), they are high in a community with incomes which are typically half those of the white community. More important is the development of basic business skills which allow Indian workers to participate in the larger economy.

Social Benefits

Because these benefits are intangible, difficult to measure and involve value judgements, they have not been addressed in detail.

Problems

There have been a number of concerns expressed about gaming which have led to support for regulations. The three most often raised are the concerns that Indian gaming diverts gaming dollars from charity gaming (eg: local church bingo games); that it is attractive to organized crime; and, that it undermines the ability of states to regulate gambling. Each of these assertions should be considered:

- Gaming diverts funds from charity gaming

There has been no evidence that Indian gaming diverts funds from charity gaming. While it makes sense that $1 spent in an on-reservation bingo game will not be spent elsewhere, it is unlikely that the two activities appeal to the same markets. While church and community games serve a local community, tribal games tend to attract individuals from a broader region. Rather than diverting resources from charities, gaming is much more likely to capture market dollars which would be spent on other forms of recreation and entertainment.

- Gaming attracts organized crime

Again, it has not been demonstrated that organized crime participates in Indian gaming ventures. However, this possibility must be addressed. As a general rule, we feel that outside managers should not participate in on-reservation gaming.

However, some tribes lack the capital or management resources to initiate gaming as a new initiative, and have turned to outside management companies. We believe that, for some tribes, outside consultants are necessary initially to develop a business. While we feel that some flexibility is necessary to allow tribes which lack sufficient management expertise to involve outside managers initially, we support efforts to phase out managers from outside the tribe and to ensure that profits from gaming remain with the community.

- Gaming undermines the ability of states to regulate gambling

Those who oppose gaming on Indian lands and seek to regulate it do not deny that there is a significant economic benefit to Indian and non-Indian local populations where these games are conducted. Instead, they bemoan the fact that "...since non-Indians are doing most of the gambling, what the tribes are doing is, in effect, marketing a tribal exemption from state laws to non-Indians." This argument assumes away the fact of Indian sovereignty and presumes that states might preempt the Congress of the United States in their well-established role of regulating commerce on Indian lands.

IV. TECHNICAL APPENDIX: SURVEY OF ECONOMIC IMPACT

Intent of Research

This following research is intended to allow preliminary conclusions to be drawn about the economic impact of Indian gaming, both on the reservation economy and on the local economy. It demonstrates the importance of a new source of basic economic activity on a community with high unemployment and relatively low per capita incomes.

In order to estimate the economic impact of gaming on tribal communities, data was collected for four NIGA member tribes with gaming operations. These were selected to maximize diversity: reservations from different areas of the country, and with different scales of gaming operations were considered.

We hope, in the future, to conduct more conclusive studies on this issue. Specifically, we would like to include a larger number of tribes, multi-year data, and survey-based employment and economic data. In addition, detailed research would utilize a variety of more sophisticated economic techniques. However, as a preliminary survey on the economic impact of gaming, the following analysis supports the assertion that in the reservation economy, gaming, like any export-oriented industry, is an important source of economic growth because of its secondary impact.

Methodology

Four tribes with bingo enterprises were surveyed to allow a preliminary analysis of the economic impact or gaming: Seneca (Buffalo NY SMSA); Acoma (Albuquerque, NM SMSA); Papago (Tuscon AZ SMSA); and Sac and Fox (Tulsa OK SMSA).

An Indian reservation, like a local area, is an open economy. It does not produce everthing it consumes, nor does it consume every product produced. In order to pay for food, manufactured goods and raw materials which are imported, the reservation must sell exports of goods or services to surrounding communities. In its interaction with other economies, the reservation is either a "winner" (with a net surplus of production) or a "loser" (consuming more than its productive capacity.

Table 1

	Area 1 Seneca	Area 2 Acoma	Area 3 Papago	Area 4 Sac&Fox
Employment	100	15	72	15
Average Wages/hr	$5.00	$3.35	$3.35	$4.00
#Customers/night	800	200	1,000	250
%Customers Non-Indian	90%	40%	95%	95%

Export or "basic" functions are those activities for which the reservation exports more than it consumes. They are the economic foundation and source of growth in an open economy. Other industries exist by servicing these basic industries.

Reservation gaming is an export-oriented or basic function. Because it serves a clientelle drawn primarily from outside the community, it brings money and jobs into the local economy. As a basic activity, it generates a demand for service industries.

The service impacts of the addition of a basic activity to an economy are threefold. First, there are direct services to the activity, such as concessions, food, parking, lodging and sundry entertainment. Secondary service growth can be related to gaming activity, including gaming machine manufacturing, furniture manufacturing, construction and other related indirect service demands. Finally, there are indirect effects which result from the growth of income in the area: the employment of additional individuals increases demand for all services.

The relationship of basic to service industries can be measured using jobs, payroll dollars or value added. In this survey, the amount of basic activity was determined by using the location quotient method of calculating employment activity. This method assumes that if the ratio of employment in a given industry is equal to the ratio of employment in the larger state economy, the local area is self-sufficient in that activity. The extent by which a local area's share of employment in an activity exceeds the state share is the proportion of basic activity.

Thus, we can calculate the number of jobs in the economy which are basic, or export-oriented, and the remainder, which are service. The ratio between these two figures describes the total employment impact of adding one additional job.

Economic theory suggests that the ratio of basic to service industries can be measured at a given point in time, and that the relationship is sufficiently stable to project into the future.

Like any economic analysis conducted using aggregate employment data and summary tehcniques, limitations exists. These include the following:

- census data may not reveal all economic activity
- the deliniation of census areas may not be consistent with economic definitions of economies
- census data is dated and provides a static, rather than dynamic picture of the local economy
- the location quotient technique does not allow for regional variations in demand
- the location quotient technique does not allow for service industry economies of scale

However, the employment multiplier does give a theoretically sound estimate of the secondary impacts of new economic activity, allowing conclusions to be drawn about the value of promoting additional export-oriented economic activity, especially in typically depressed reservation economies.

Analysis

Using data from the 1980 census, location quotient calculations (see attached detail) reveal the following patterns for the four areas analyzed:

Table 2 illustrates the multiplier benefit of creating additinal jobs in a basic industry. For example, in Area 1, the ratio of service to basic industries is 5.47. Therefore, the addition of one basic job in gaming will create 6.47 jobs overall. Because secondary service growth will spill over to the larger community, a second multiplier, for all local workers, was calculated. This multiplier suggests that total employment growth from one additional basic job will be 7.20. The actual multiplier will be between these two figures, depending on the links between the Indian and local economies.

Table 2

Basic and Service Employment

	Area 1 Seneca	Area 2 Acoma	Area 3 Papago	Area 4 Sac&Fox
All Employees				
Basic	62,953	19,949	94,926	32,180
Service	453,392	176,489	125,255	288,459
Ratio	7.20	8.85	1.32	8.96 !
Indian Employees				
Basic	344	1,061	355	1,644
Service	1,884	5,336	3,863	12,998
Ratio	5.47	5.03	10.89	7.91
Employment Growth				
Gaming	100	15	72	15
Secondary	547	75	784	119
Total	647	90	856	134

The most dramatic change in employment was predicted for areas 3 and 1, with percentage increases in employment of .38 and .12, resulting and 856 and 647 jobs respectively. Areas 2 and 4 had relatively smaller increases of .04 each. Even the smallest games are not insignificant to tribal employment: in areas 2 and 4, employment increased by 90 and 134 jobs respectively.

Given the high rates on unemployment around reservation areas, and the even higher rates of unemployment for Indians, the multiplier associated with gaming should be viewed with optimism. In the absence of comparable alternative community development strategies, gaming presents a superior solution to tribal economic development and the problem of high unemployment.

It should be noted that for all areas, employment multipliers were much larger than those which are typical for diversified metropolitan ares. This implies than reservations, and surrounding areas, tend to be more economically depressed. Consegently, economic growth relies more heavily on the addition of export-oriented employment.

Conclusions

The increase in gaming related employment has large secondary impacts. A general rise in employment can be assumed to be associated with an increase in income. This is true for households, reservations and local economies.

To the extent that gaming employment increases household income, we can expect that the dependence of Indian households on income from transfer payments will be reduced.

Profit from gaming activities is also retained by tribal governments. This makes tribal governments more self sufficent, and less dependent on the federal government for support.

Gaming revenues and secondary impacts also support the local economy. To the extent that the reservation economy is open, additional revenue from gaming increases employment and consumption in surrounding areas.

It is important to consider that gaming on reservations is primarily an export activity: money is flowing into the area which might otherwise be spent elsewhere. (One parking lot survey indicated that gaming visitors travelled from as many as five different States.)

Considering the depressed nature of reservation economies, even small gaming operations can have a substantial impact on the economic base.

NATIONAL TRIBAL CHAIRMEN'S ASSOCIATION
ANALYSIS OF EMPLOYMENT AND INCOME DATA

Tribe Name:	Seneca
Statistical Area:	Buffalo, NY
Gaming Employees:	100

Unemployment and Income

	White	Indian	Indian as a % of White
Unemployment Rate	9.37%	29.79%	
Income per Person	$8,166	$4,198	51.41%

Employment Multiplier Analysis

Employment Summary	Basic	Service	Ratio	Created
All Local Workers:	62,953	453,392	7.20	
Indian Workers:	344	1,884	5.47	547

Job Group	All workers				Indian Workers			
	Area	State	%Basic	#Basic	Area	State	%Basic	#Basic
Agriculture	4,460	88,112	72.94%	0	28	210	92.64%	0
Mining	302	7,997	54.42%	0	0	30	0.00%	0
Construction	18,991	274,956	99.53%	0	248	962	179.12%	196
Manufacturing	142,596	1,557,150	131.96%	45,579	647	3,810	117.99%	116
Transport & Communications	35,873	616,737	83.82%	0	198	1,247	110.32%	20
Wholesale Trade	22,413	337,477	95.70%	0	63	372	117.67%	11
Retail Trade	90,855	1,099,083	119.12%	17,374	256	1,815	98.00%	0
FIRE*	26,570	614,276	62.33%	0	67	805	57.83%	0
Service+	151,837	2,453,519	89.18%	0	564	5,048	77.63%	0
Public Administration	22,448	391,461	82.64%	0	157	1,181	92.36%	0
Total	516,345	7,440,768		62,953	2,228	15,480		344

* Finance, Insurance, Real Estate
+ Gaming is included in this category under SIC code 799: Miscellaneous Amusement and Recreation Services

Data Source: 1980 U.S. Census, PC 80-1-C-- General Population Characteristics; PC 80-1-D-- Detailed Characteristics

NATIONAL TRIBAL CHAIRMEN'S ASSOCIATION
ANALYSIS OF EMPLOYMENT AND INCOME DATA

Tribe Name: Papago
Statistical Area: Tucson, Arizona
Gaming Employees: 72

Population, Income and Poverty Data

	White	Indian	Indian as a % of White
Unemployment Rate	6.23%	18.02%	
Income per Person	$7,962	$2,796	35.12%

Employment Multiplier Analysis

Employment Summary	Basic	Service	Ratio	Created
All Local Workers:	94,926	125,255	1.32	
Indian Workers:	355	3,863	10.89	784

	All workers				Indian Workers			
Job Group	Area	State	%Basic	#Basic	Area	State	%Basic	#Basic
Agriculture	3,168	36,741	43.60%	0	114	1,633	63.27%	0
Mining	10,841	26,605	206.03%	28,209	278	1,559	161.60%	171
Construction	17,051	90,381	95.39%	0	241	2,698	80.95%	0
Manufacturing	22,861	161,302	71.66%	0	263	2,929	81.37%	0
Transport & Communications	13,436	73,779	92.08%	0	236	2,376	90.02%	0
Wholesale Trade	8,532	44,413	97.13%	0	26	474	49.71%	0
Retail Trade	40,226	201,681	100.85%	1,708	471	3,386	126.06%	123
FIRE*	13,717	77,266	89.76%	0	103	694	134.50%	36
Service+	77,753	328,122	119.81%	65,009	1,446	13,274	98.72%	0
Public Administration	12,596	72,980	87.27%	0	1,040	9,203	102.41%	25
Total	220,181	1,113,270		94,926	4,218	38,226	988.62%	355

* Finance, Insurance, Real Estate
+ Gaming is included in this category under SIC code 799; Miscellaneous Amusement and Recreation Services

Data Source: 1980 U.S. Census, PC 80-1-C-- General Population Characteristics; PC 80-1-D-- Detailed Characteristics

NATIONAL TRIBAL CHAIRMEN'S ASSOCIATION
ANALYSIS OF EMPLOYMENT AND INCOME DATA

Tribe Name:	Acoma Pueblo
Statistical Area:	Albuquerque, NM
Gaming Employees:	15

Population, Income and Poverty Data

	White	Indian	Indian as a % of White
Unemployment Rate	6.71%	12.16%	
Income per Person	$6,886	$2,972	43.16%

Employment Multiplier Analysis

Employment Summary	Basic	Service	Ratio	Created
All Local Workers:	19,969	176,489	8.85	
Indian Workers:	1,061	5,336	5.03	75

	All workers				Indian Workers			
Job Group	Area	State	%Basic	#Basic	Area	State	%Basic	#Basic
Agriculture	2,521	18,817	34.66%	0	111	700	69.32%	0
Mining	1,698	28,697	15.31%	0	60	2,363	11.10%	0
Construction	14,676	42,769	88.78%	0	544	2,699	88.11%	0
Manufacturing	18,515	37,737	126.94%	4,988	630	2,012	136.88%	232
Transport & Communications	14,507	37,362	100.46%	67	289	1,993	63.39%	0
Wholesale Trade	9,013	17,024	136.98%	3,333	130	341	166.65%	87
Retail Trade	35,104	88,529	102.59%	910	560	2,500	97.92%	0
FIRE*	13,406	26,445	131.16%	4,177	190	511	162.54%	119
Service+	70,799	167,828	109.15%	6,475	2,181	9,218	103.43%	75
Public Administration	16,199	43,030	97.40%	0	1,702	5,627	132.22%	548
Total	196,438	508,238		19,969	6,397	27,964		1,061

* Finance, Insurance, Real Estate
+ Gaming is included in this category under SIC code 799: Miscellaneous Amusement and Recreation Services

Data Source: 1980 U.S. Census, PC 80-1-C-- General Population Characteristics; PC 80-1-D-- Detailed Characteristics

NATIONAL TRIBAL CHAIRMEN'S ASSOCIATION
ANALYSIS OF EMPLOYMENT AND INCOME DATA

Tribe Name:	Sac & Fox
Statistical Area:	Tulsa, OK
Gaming Employees:	15

Population, Income and Poverty Data

	White	Indian	Indian as a % of White
Unemployment Rate	3.38%	6.79%	
Income per Person	$7,272	$4,352	59.8460%

Employment Multiplier Analysis

Employment Summary	Basic	Service	Ratio	Created
All Local Workers:	32,180	288,459	8.96	
Indian Workers:	1,644	12,998	7.91	119

	All workers				Indian Workers			
Job Group	Area	State	%Basic	#Basic	Area	State	%Basic	#Basic
Agriculture	4,368	49,481	35.46%	0	287	1,926	58.47%	0
Mining	14,784	64,690	91.79%	0	584	2,123	107.93%	46
Construction	22,526	92,856	97.44%	0	1,314	5,422	95.09%	0
Manufacturing	67,371	214,779	125.99%	17,510	3,469	11,357	117.77%	617
Transport & Communications	29,224	96,043	122.22%	6,492	1,289	3,478	145.41%	585
Wholesale Trade	18,672	57,921	129.48%	5,503	598	1,856	126.42%	158
Retail Trade	49,875	211,505	94.71%	0	1,815	7,578	93.97%	0
FIRE*	19,499	68,873	113.72%	2,674	656	1,890	136.18%	237
Service+	84,776	352,646	96.56%	0	3,888	16,235	93.96%	0
Public Administration	9,545	79,073	48.48%	0	742	5,384	54.07%	0
Total	320,639	1,287,867		32,180	14,642	57,449	1029.28%	1,644

* Finance, Insurance, Real Estate
+ Gaming is included in this category under SIC code 799: Miscellaneous Amusement and Recreation Services

Data Source: 1980 U.S. Census, PC 80-1-C-- General Population Characteristics; PC 80-1-D-- Detailed Characteristics

PREPARED STATEMENT OF LIONEL JOHN

Good morning, Mr. Chairman, members of the Committee and staff. My name is Lionel John. I am the Treasurer of the United South and Eastern Tribes, Inc. and the Treasurer of the Seneca Indian Nation of New York. Appearing with me is Curtis Osceola, Executive Director of USET and a member of the Miccosukee Tribe of Florida.

USET is an inter-tribal organization composed of sixteen member tribes located in nine states along the south and eastern seaboard from Florida in the south to Maine in the north. USET, headquartered in Nashville, Tennessee, was founded in 1968 and is dedicated to promoting the economic and social welfare of its member tribes.

Currently seven of our member tribes are actively engaged in gaming. Two additional member tribes will be engaged in gaming within the next month to nine months. In addition to their own games, two of our member tribes act as contract managers for three other tribal gaming operations. Thus, within the year, 10 of our member tribes will benefit as owners and/ or management contractors in 14 gaming operations. All of these gaming operations involve BINGO and Pull Tabs and with the exception of one, are 100% owned by the respective tribes.

USET and other tribes and organizations have previously testified to the beneficial uses that gaming revenue has been put, the negative social and economic conditions on most reservations, the tremendous impact that static and reduced federal funding has had, the lack of a viable economic infrastructure or tax base on most reservations and the lack of any evidence of organized criminal involvement in Indian gaming. Rather than reiterate these conditions, impacts and facts, we will just reference our testimony before this Committee of June 26, 1985 and proceed to discuss our views and recommendations relative to the respective legislative gaming measures pending before the Committee.

This Committee has before it two Indian gaming bills, S. 902 and H.R. 1920. While not formally introduced nor pending before the Committee, the Administration has transmitted a third bill entitled the "Indian Gambling Authorization and Regulation Act of 1986" for which they have been attempting to find a sponsor. We will address our comments to all three measures.

USET was responsible for developing S. 902 sponsored by Senators DeConcini, Cohen, Mitchell and Cranston. Thus, the member tribes of USET fully support the provisions of S. 902 and wish to thank the Senators for sponsoring this legislation.

Based upon the experience of the gaming tribes of USET, we feel that S. 902 is a well-balanced and adequate legislative measure to ensure the Indian gaming operations are conducted with accountability, honesty, and without involvement of unscrupulous or criminal elements from within or outside of the respective tribes.

S. 902 establishes all of the essential standards and safeguards and provides for essential sanctions for any violations of those standards which might be necessary for the proper operation of gaming acitivites on Indian reservations. The legislation would not authorize any tribe to engage in any gaming activity which is prohibited by state law. It merely recognizes the sovereign rights of tribes to regulate their own gaming activities if such activities are not otherwise prohibited by state law.

While S. 902 and H.R. 1920 are very similar in some respects, there are some very critical differences which would render H.R. 1920 unacceptable to the member tribes unless such provisions of H.R. 1920 are appropriately amended. The Administration's proposed bill is completely unacceptable to us for reasons which will be made clear herein.

THE COMMISSIONS

Section 11 of S. 902 authorizes the gaming tribes in the respective BIA Areas to establish "Regional Indian Gaming Commissions" in each of the respective BIA Areas. Should the tribes in any given Area not wish to establish such a Commission, the Secretary of the Interior would regulate the conduct of the Indian gaming pursuant to the specific standards established under the Act.

Section 5 of H.R. 1920 authorizes the establishment of a "National Indian Gaming Commission" which would regulate Indian gaming pursuant to the specific standards established under the Act.

Section 302 of the Administration's proposed bill purports to establish a commission within the Department of the Interior known as the "American Indian Bingo Commission" which really isn't a commission at all, but rather only confers the title of "Commissioner" to three employees of the Secretary whose selection, tenure, regulatory activities, budget, support staff, legal counsel and enforcement actions would be completely subject to the review, control and approval of the Secretary. Furthermore, while the Administration's proposed bill does establish some specific standards for regulating Bingo, most of the critical standards are not specified but rather left up to the Commission to determine via regulations which would govern hours of gaming operations, prize money, entrance fees for patrons, who can be a Bingo employee and virtually every other essential aspect of tribal gaming. In short, the Administration's proposed bill would authorize the Commissioners to establish regulations and conditions which could completely close down Indian Bingo operations and Indian tribes would have no legal basis to effectively challenge or object to what regulations might be imposed.

While the standards regulating the adoption of tribal gaming ordinances, and the approval of gaming licenses and management contracts is more comprehensive under H.R. 1920 than S. 902, USET has no essential problems between the standards to be applied under either S. 902 or H.R. 1920 with the exception of the Class III standards contained in H.R. 1920. USET is also not particularly concerned about whether Regional Commissions or a National Commission is established. We are, however, deeply concerned about:

1. the composition and selection of the Commissioners and the Chairman
2. the autonomy of the Commission;
3. the powers of the Chairman vis a vis the Commission as a whole;
4. the autonomy of the Commission to select its own staff;
5. the autonomy of the Commission to develop its own budget; and
6. the standards to be applied by the Commission

We have no problems with the provisions of S. 902 establishing Regional Indian Gaming Commissions or the authority of such Commissions.

We do object to certain aspects of Section 5 of H.R. 1920. First, it provides that the Chairman of the Commission be selected and appointed and serve at the pleasure of the Secretary of Interior. While we do not object to the Secretary or the Attorney General selecting and appointing one member each to the Commission, we strongly object to the Secretary appointing the Chairman of the Commission, particularly in light of the exclusive powers vested in the Chairman pursuant to section 6. We would recommend that subsection 5(e) be amended such that both the Chairman and the Vice Chairman be selected by a majority vote of the Commissioners; that Subparagraph 5(b)(1)(A) be amended to state that the Secretary may select and appoint "a member"; that subparagraph 5(b)(3)(B)(i) be amended to specify that the Secretary's appointed Commissioner serve a term of two years rather than at his pleasure; and that subparagraph 5(b)(5) be amended such that any member can be removed from the Commission for good cause not excepting the Chairman or Secretary's appointee.

The purpose of this legislation is to establish federal standards and regulations for the conduct of Indian gaming, not to vest the Secretary of the Interior via a surrogate and vulnerable appointee with exclusive powers and subject to political influence. Section 5(a) of H.R. 1920 purports to establish an "independent commission". How independent can such a Commission be if the Chairman is selected and serves at the pleasure of the Secretary of the Interior, for no fixed term, who exercises exclusively the most critical authority vested in the Commission and who cannot be removed for cause by the other Commissioners. The answer should be obvious.

While we are cognizant that the Chairman of the Commission should carry out many of the initial authorities contained in H.R. 1920, we strongly recommend that the bill be amended such that the Commission itself has either approval or appellate authority over the actions of the Chairman in appropriate circumstances. We therefore recommend the following amendments:

1. That the "exclusive power" provisions of Section 6(a) be deleted such that paragraphs (1) and (2) thereof become paragraphs of subsection (c) and that paragraph (3) of section 6(a) become a paragraph of subsection (b).

2. That appropriate corresponding amendments be made to the following provisions to reflect the above amendments:

Section 8(b) line one, following "Chairman" add "with the approval of the Commission",

Section 8(d), line 15, following the word "Chairman" add "or the Commission";

Section 9, line 2, following "Chairman" add "or the Commissioner".

Sections 11, 12 and 13 should each be amended to provide for an appeal process to the Commission similar to that provided for in Section 14(b)(2) and to the Federal district court similar to that provided in Section 14(c).

We also object to the provisions of Section 5(b)(1)(D) which authorizes the appointment of a Commissioner selected by the States. Indian tribes are seperate sovereigns and are not subdivisions of the State governments. Tribes are not subject to the regulatory jurisdiction of the States. Pursuant to the U.S. Constitution and the treaties between the respective tribes and the U.S., there is a government to government relationship between the respective tribes and the U.S. government. States have no authority to regulate Indian tribes and therefore should not participate on a federal Commission regulating Indian gaming. Allowing State participation on the Commission is an erosion of the Federal/ Tribal government to government relationship. States should play no part even through a federal Commission in voting on issues affecting the sovereign rights of the tribes. There is no state in this country which has similarly provided a position for the Indian tribes within their state gaming commissions. We therefore recommend that paragraph (D) of Section 5(b)(1) be stricken from H.R. 1920.

The Administration's proposed bill would establish a Commission in name only. The three members of the Commission would all be existing employees of the Secretary of Interior (two) or the Attorney General (one). All three Commissioners would serve at the pleasure and be subject to removal without cause by their respective bosses. See Section 302. This would prevent any independence of the Commissioners and make them totally susceptible to partisan political control.

Additionally, all of the administrative services and all of the staff of the so-called Commission would be completely controlled and determined by the Secretary and what he determines is needed. The so-called Commission would have no discretion, line authority or control.

The Secretary would even control the selection and appointment of the Commission's General Counsel. The Attorney General would provide all legal representation on legal disputes involving the Commission, thus assuring no independent legal counsel or thought outside that popular with the Administration. See Section 303.

Virtually all policies, rules and regulations of the Commission would be subject to the approval of the Secretary. See Section 304.

The Commission's regulations and standards would be virtually unlimited. The totally open ended authority given to the Commission would enable them to have total discretion to restrict when and for how long a Bingo game could operate; what prize money could be awarded, how much a tribe could charge for admission; who could be employed and how much they can be paid; and unrestricted authority to determine who and under what conditions management contracts would be permitted if at all. See Section 305.

Apparently "Brave New World" and "1984" have finally arrived. "Big Brother" wants to control everything - forget checks & balances, objectivity, limits, standards, self-government, free enterprise, freedom to contract, competition or anything else this country is supposed to represent. If I had had a nightmare concerning what the Administration was going to send up here, I couldn't have written it better.

There are also fundamental differences between S. 902, H.R. 1920 and the Administration's proposed bill regarding the types of gaming operations which would be regulated and those which, although currently allowed under federal court decisions, would be prohibited or expressly placed under state regulation.

S. 902 does not distinguish between Bingo/ lotto/ pull tab operations and casino/paramutual operations. If any form of gaming operation is not criminally prohibited by the state then Indian tribes would be permitted to engage in that gaming activity. This is the current state of the law. S. 902 would require such gaming operations, regardless of the type, to comply with the regulatory standards established under the Act. S. 902 would not prohibit nor place any type of gaming which is currently legal under the regulatory jurisdiction of the States but rather under the regulatory standards of the Act.

This was the purpose of the USET member tribes and other tribes requested gaming legislation be introduced in both the House and Senate.

H.R. 1920 as amended in the House, distinguishes bingo/ lotto/ pull tabls as "Class II gaming" and casino/ paramutual operations as "Class III gaming". Class II gaming would be regulated by the commission pursuant to the specific standards established under the Act. However, Class III gaming would be treated much differently and in a manner totally unacceptable to the member tribes of

USET as well as other tribes throughout the country.

Section 3 of H.R. 1920 would place a four year moratorium on any tribe wishing to engage in a Class III gaming operation even if it would be legal for a tribe to do so under existing law. Section 21 of H.R. 1920 would require the Comptroller General to complete a study of Class III gaming and determine whether the tribes, states or federal government would be the best regulator of Class III Indian gaming. Presumably Congress would then have two years to consider any additional legislation regarding Class III gaming before the moratorium expires.

Section 3 of H.R. 1920 also purports to grandfather in any Class III gaming operation which was in existence prior to January 1, 1986. However, paragraph 3(c)(3)(B) further requires that all such existing Class III operations comply with a regulatory standards which are "substantially equivalent to those of the State." This latter provision will result in most of the existing Class III operations having to close down notwithstanding the grandfather clause although this was not the intended effect.

H.R. 1920 was amended to establish the Class distinctions and the different treatment of Class II from Class III gaming because of political and economic pressure put on some Congressmen by casino and paramutual operators and states.

Is it because Indian tribes have a record of not being able to adequately operate and manage Class III operations or operate fixed gaming operations? No. There is no such evidence. In fact, the evidence demonstrates just the opposite—tribally operated Class III gaming is well managed and cleanly operated. The privately owned non-Indian and state operated and regulated Class III games by contrast are replete with documented corruption, fixing and organized crime involvement. Look who is calling the kettle black.

If there is no demonstrated organized criminal involvement, no wide-spread mismanagement or corruption documented in the tribally operated Class III gaming, why then are the casino and paramutual operators, and some of the states urging Congress to prohibit or put Class III Indian gaming under state regulation? There is no documentable reason other than money. The privately-owned, state operated and state taxed Class III operations make a lot of money. It boils down to greed and a desire to prevent competition from the tribes. Anyone who pretends otherwise is either a fool or intellectually dishonest and self-interested. The lobbying conducted by some self-interested parties on the House side on behalf of this bill was, in many instances, distorted and dishonest.

We ask this Committee and this Senate to deal with facts and to make decisions based on the merits.

A Committee comprised of seven state legislators from Michigan studied the Indian gambling operations in Michigan. In addition to Indian bingo (Class II) operations, there are five small tribally operated casinos.

The Committee report of these Michigan state legislators is revealing. Excerpts from the Committee's unanimous final report states:

> During the course of the past year, much information has been obtained and scrutinized regarding the status of gambling on Indian reservations in Michigan and other areas of the United States.
>
> * * * * *
>
> It is important to note that the reservations involved operate(d) casino type gambling games. These activities include black jack, craps and big wheel games.
>
> * * * * *
>
> It is necessary to understand why many Indian tribes, not only in Michigan, but throughout the United States, have turned to gambling as a business opportunity.
>
> The issue is money. Cutbacks in social programs, which Indian tribes have heavily relied upon, have been the motivation for starting the games.
>
> * * * * *

There have been no significant problems or adverse affect on games offered by charitable organizations such as church groups.

* * * * *

....the federal government is attempting to put regulations on gambling at Indian reservations. It is hoped that a new spirit of cooperation between the federal government and Indian tribes nationwide will develop and pave the way to economic independence for the Indian tribes in Michigan and the rest of the nation.

* * * * *

In conclusion the committee has learned how the advent of gambling activities on Indian Reservations in Michigan has led tribes to become more self-sufficient and less dependent on the federal government for assistance.

Gambling activities have led to a marked increase in employment on the reservations and the monies earned have gone to such programs as alcohol and drug rehabilitation centers, medical centers, community buildings, homes and schools.

As stated previously, it was not this committee's intent to pass judgement on the use of gambling as a means of raising revenue. The committee's concern centered around whether the tribes and communities surrounding them are financially benefitting from legal gambling.

The findings of the committee support the conclusion that the use of gambling on Indian Reservations in Michigan has led to financial benefits for those reservations as well as to surrounding communities.

REPORT OF THE SPECIAL AD HOC COMMITTEE TO STUDY LEGAL GAMBLING ON INDIAN RESERVATIONS IN MICHIGAN, MAY, 1986.

If H.R. 1920 or its Class III provisions are not amended, all of the Class III operations in Michigan and most of the others in the country will be effectively eliminated.

Given the objective and documented facts that Indian gaming in the area of Class III has been well managed, not fraught with corruption or organized crime and has had many beneficial economic and social benefits to both the tribes and the surrounding communities, we strongly request that Class III gaming be treated no differently than Class II gaming.

The Class III operations of tribes have operated well even without the safeguards, investigations and controls which would be afforded by federal legislation. In the absence of any documentable abuses why should federal legislation prohibit tribes from operating and continue to operate Class III gaming?

Rather than place a moratorium on Class III gaming and require existing operations to comply with state regulations based upon undocumentable abuses or a fear of what abuses might occur in the future, we would strongly recommend that:

1. Section 3(c) be stricken from H.R. 1920.
2. That Section 21 be amended such that the Comptroller General conducts a study to determine how well Class III Indian operations are operating, to what extent, if any, organized crime or corruption is manifest; and the positive and negative effects of such gaming on the socio-economic condition of the tribes, surrounding communities and states. If the effects are negative and/ or there is organized criminal involvement or corruption, then Congress can always amend this legislation appropriately based upon future experience and verifiable facts. We feel this is an entirely reasonable approach. Why perform brain surgery until you're sure the patient is ill?

The Administration's proposed bill purports to authorize Indian bingo gaming and would place all other gaming, even pull tabs, under state regulation. The Administration's position is that organized crime is sure to take over Indian gaming even if it hasn't to date because one only need look at how pervasive it is in the state regulated games to know what will happen. Their solution to prevent this inherent evil befalling the, as yet, uncorrupted tribes is to put them under the regulation of the states which have such a stellar records of preventing such corruption. Does this make sense to you?

Bingo, the only gaming activity that the Administration does not propose to be placed under state jurisdiction, would be subject to virtually unlimited regulation by the Secretary of the Interior through his wholly owned and controlled so-called Commissioners.

The Administration states that there won't be need for much staff since most of the investigative and regulatory enforcement would be contracted out. Tribes, other agencies and states are listed as entities who could be contracted with. Now who do you think will be the contractor in most instances? But we sure are glad we won't be subject to state regulation, aren't we?

Section 3(a) of H.R. 1920 makes it illegal for any tribe to engage in gaming on any lands taken into trust after December 4, 1985 if such lands are outside the boundaries of the tribe's reservation. Subsection (b) provides that the above prohibition will not apply if such lands are acquired with the concurrence of the Governor of the State, the State legislature and the local county and municipal government.

This provision would, in effect, give any one of the above mentioned entities an absolute veto power regardless of the merits of a particular tribe's request. Even the State governments and the Congress have provisions for over riding a veto. This provision, however affords no such veto override mechanism.

We feel this provision is flawed and should be be fundamentally amended. Taking lands in trust for a tribe has been a federal question and should not be controlled via veto authority vested in multiple branches and subdivisions of State government.

We strongly recommend that Section 3 be amended such that if the Secretary elects to take off-reservation lands in trust that he submit a statement of his intention to do so to Congress. That such lands would become trust lands unless Congress passes a resolution rejecting the Secretary's action within 180 legislative days after his submission to Congress.

This approach would leave the initial determination in the hands of the Secretary. If he views the request as having merit, then the Congress can review his decision. The Governor, State legislators, and local governments would have ample opportunity to make their respective views known to Congress and Congress can review the issue based upon the relative merits of the Tribe and other parties concerned.

Indian bingo games run by the respective tribes vary in the size of the prize money to be awarded, admission fees, and hours and days of operation. The profitability of such games is extremely dependent upon dissemination of information so that patrons and bus companies know when the games will be played, what admission fees will be charged and the prizes to be awarded.

Dissemination of information through the mails or by broadcast is critical. Tribes had been availing themselves of the mail, etc. up until last year when the Solicitor's Office of the Department of the Interior issued opinions that 18USC§§1301-1307 prohibited the tribes from using the mail or broadcasts to disseminate gaming information.

18USC§1307 provides an exemption to States which operate their own lotteries. We would strongly recommend that tribes be afforded the same exemption via amendments to this legislation.

Many tribes are located in remote areas and dissemination of gaming information is critical to maintaining viable gaming operations.

Just as the States conduct lotteries and gaming to supplement government revenue and need to advertize to generate such revenue, the tribes also generate revenue through gaming and should not be disadvantaged in advertizing any more than the states are.

Our final amendment we would propose is that Section 11(b)(2)(B)(v) be amended such that it references and incorporates the provisions of 25 USC§1407.

CONCLUSION

Indian Tribes are at a critical crossroads at this point in time. The unemployment rate for the USET Tribes ranges from a high of 46 percent to a low of 25 percent. The federal deficit and resultant budget cuts have drastically reduced and, in some cases, eliminated many federal programs for Indian people. Most tribes do not have an economic infrastructure or viable tax base from which to generate needed revenue to maintain essential services or to develop critically needed investment and development capital. The states, when referring to Indian gaming, speak of the inherent evil of gambling yet they aggressively promote their own gaming as a means of raising revenue. The states insist that they must have the power to regulate Indian gaming because the tribes are incapable of doing it. Yet the papers are filled with stories of corruption and criminal activity surrounding state regulated gaming activities. By comparison, Indian gaming operations have had no such demonstrable corruption or criminal activity. Perhaps the states should allow tribes to regulate their gaming operations.

We submit that the issue is not demonstrated corruption or inability to regulate, but one of competition, greed and control. The states wish to maintain their monopoly and control. The issue has been the same with all shared resources such as fish and wildlife, water rights, zoning, etc. In virtually every area of competition for resources the states have always contended that tribes can't manage and we should have control. The record in virtually every area including gaming demonstrates otherwise.

We hope you find our testimony provacative, and on the mark. We urge you to act favorably and expeditiously on Indian gaming legislation and that the legislation you adopt is based upon reason and the facts. We thank you for the opportunity to present our views on this very important matter.

OMAHA TRIBE OF NEBRASKA

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Tribal Administration

MEMBERS
[illegible] WALKER
[illegible] WOLFE JR
WILLARD D. [illegible]

PREPARED STATEMENT OF WADE MILLER

I am W. Wade Miller, Chairman of the Tribal Council of the Omaha Tribe of Nebraska. The purpose of my appearing here today is to provide testimony in support of S. 902 in a form which would allow an Indian Tribe to deal, operate, carry on, conduct or maintain for play, any banking or percentage game or other game of chance played for money, property, credit, or any representative value which is conducted pursuant to a tribal ordinance or resolution adopted by an Indian Tribal Government which is not prohibited by any specific federal law prohibiting gaming activity.

The Omaha Tribe of Nebraska supports the enactment of legislation which would allow the Secretary of the Interior to approve a tribal ordinance or resolution concerning the conduct, licensing, or regulation of gaming activity within the Tribe's jurisdiction, but opposes any legislation which limits the jurisdiction of an Indian Tribe including the acquisition of off reservation property to be held in trust status.

Specifically, the Omaha Tribe of Nebraska opposes any modification of S. 902 which would:

1. Submit the Tribe to the regulatory authority of any state or state agency regarding gaming activities;

2. Require an Indian Tribe establish regulations or licensing requirements that are related to state regulations or licensing governing similar gaming within the jurisdiction of the state which said Tribe is located;

3. In any waiving of the sovereign immunity of the Indian Tribe;

4. Require the Federal Government to license Indian Tribes to operate any form of gaming activities;

5. Prevent an Indian Tribe from regulating the day to day operations of the gaming activities within its jurisdiction.

SELF-GOVERNMENT

The basis of the Omaha Tribe of Nebraska's position arises from the Tribe's powers of self-government. As stated by Felix S. Cohen in The Legal Conscience: Selected Papers of Felix S. Cohen (New York 1970):

"Self-government is not a new or radical idea. Rather, it is one of the oldest staple ingredients of the American way of life. Many Indians in this country enjoyed self-government long before European immigrants who came to these shores did. It took the white colonists north of the Rio Grande about 170 years to rid themselves of the traditional European pattern of the divine right of kings or, what we call today, the long arm of bureaucracy, and to substitute the less efficient but more satisfying Indian pattern of self government. South of the Rio Grande the process took more than three centuries, and there are some who are still skeptical as to the completeness of the shift ...

In the history of Western thought, theologians, missionaries, judges, and legislators for 400 years and more have consistently recognized the right of Indians to manage their own affairs. Nothing that we could say today in defense of Indian rights of self-government could be as eloquent as the words of Franciso de Vitoria in 1532 or of Pope Paul III in 1537 or of Bartholomew de las Casas in 1542 or of Chief Justice Marshall in 1832. For 400 years, men who have looked at the matter without the distortions of material prejudice or bureaucratic power have seen that the safety and freedom of all of us is inevitably tied up with the safety and freedom of the weakest and the tiniest of our minorities. This is not novel vision but ancient wisdom ...

The great American philosopher, Ralph Barton Perry, coined the phrase, "the egocentric predicament " to call attention to the fact that each of us is at the center of his world and cannot help seeing the world through his own eyes and from his own position. It takes a certain amount of sophistication to realize that the vision of others who see the world from different perspectives is just as valid as our own. One of the striking features of the administrative or bureaucratic mind is that it lacks such sophistication. Thus, it often turns out that the officials who have most to say in praise of Indian self-government have a certain blind spot where Indian self-government comes close to their own activities ...

Those of us in the Department who had been given a special responsibility for protecting Indian tribal self-government finally went to the Commissioner and pointed out that if we followed the traditional practice of yielding to each expert division on the matters with which it was concerned, there would be no Indian self-government.

May we not profit, may not the world profit, if in a few places in our Western Hemisphere there is still freedom of an aboriginal people to try out ideas of self-government, of economics, of social relations. After all, there are so many places all over the world where we Americans can try out the ideas of economics and government that we know to be right. Is there not a great scientific advantage in allowing alternative ideas to work themselves out to a point where they can demonstrate the evils that we believe are bound to flow from a municipal government that maintains no prisons, or from a government that gives land to all members of the group who need it? Are we not lucky that the areas within which these governmental ideas can work from themselves out are so small that they cannot possibly corrupt the nation or the world ...

What provokes skepticism is the fact that the various bills which are being introduced into Congress to achieve this objective generally end up by giving new powers and new millions of dollars not to the Indian Tribal Councils but to the Indian Bureau. And when we find that specific dates are not attached to any promised transfers of powers to the tribes, we are entitled to be skeptical. The record shows that for more than one hundred years the aggrandizement of Indian Bureau power has been justified on the ground that this was merely needed for a brief temporary period until authority could be conveyed over to the Indian themselves ...

The issue is not only an issue of Indian rights; it is the much larger one of whether American liberty can be preserved. If we fight only for our own liberty because it is our own, are we any better than the dog who fights for his bone? What is my own divides me from my fellow man. Liberty, which is the other side of the shield of tolerance, is a social affair that unites me with my fellow man. If we fight for civil liberties for our side, we show that we believe not in civil liberties but in our side. But when those of us who never were Indians and never expect to be Indians fight for the cause of Indian self-government, we are fighting for something that is not limited by the accidents of race and creed and birth; we are fighting for what Las Casas and Vitoria and Pope Paul III called the integrity or salvation of our own souls. We are fighting for what Jefferson called the basic rights of man. We are fighting for the last best hope of earth. And these are causes that should carry us through many defeats".

SELF-DETERMINATION

After the policy of termination was abandoned in 1958, the Federal Government moved away to policies of self-determination. The self-determination policy is premised upon the notion that

Indian Tribes are the basic governmental units of Indian policy. In fact, the 93rd Congress of the United States made specific findings and found that after careful review of the Federal Government's historical and special legal relationship with, and resulting responsibilties to, the American people, the prolonged federal domination of Indian Service Program has served to retard rather than enhance progress of Indian people and their communities by depriving Indians of the full opportunity to develop leadership skills crucial to the realization of self-government, and has denied Indian people an effective voice in the planning an implementation of programs for the benefit of Indians which are responsive to the true needs of Indian communities.

Further, the Congress found that Indian people will never surrender their basic desire to control the relationships both among themselves and with non-Indian governments, organizations and persons. Congress recognized the obligation of the United States to respond to the strong expression of Indian people for self-determination by assuring maximum Indian participation in the direction of federal services to any communities so as to render such services more responsive to the needs and desires of those communities.

Finally, the Congress declared that its committment to the maintenance of the Federal Government's unique and continuing relationship with the responsibility to Indian people through the establishment of a meaningful Indian self-determination policy which will permit an orderly transition from federal domination of programs and services to Indians to effective and meaningful participation by the Indian people in the planning, conduct and administration of those programs and services.

It is clear that the policy of self-government along with the policy of self-determination clearly allows Tribes to engage in gaming activities without State Government interference.

ECONOMIC CRITERIA

The current federal policy is to encourage and foster tribal self government and to promote reservation economic development. This federal policy was further evidenced by President Reagan's statement that:

> "It is important to the concept of self-government that Tribes reduce their dependence on federal funds by providing a greater percentage of the cost of their self-government." Statement by the President: Indian Policy, The White House, January 24, 1983.

Tribal bingo games have been recognized as one way to support this policy. A policy directive issued by the Assistant Secretary of the Interior on March 2, 1983 stated that the Department of the Interior would strongly oppose any proposed legislation that would subject Indian individuals, Indian organizations, and Tribal Governments to state laws with regard to licensing, regulation or prohibition of gambling on Indian Reservations ... A number of tribes have begun to engage in bingo and similar gambling operations on their reservations for the very purpose enunciated in the President's Message. Given the often limited resources which Tribes have for revenue-producing activities, that this kind of revenue-producing possibility should be protected and enhanced.

Tribal gaming enterprises are an appropriate means by which Tribes can further their economic self-sufficiency, the economic development of reservations and tribal self-determination. All of these are federal goals for the Tribes. Furthermore, the development of tribal gaming enterprises is consistent with and in furtherance of President Reagan's Indian Polciy Statement of January 24, 1983.

Finally, it is clear that numerous state and local governments have engaged in various forms of gaming activities to raise revenues for the administration of government. The Omaha Tribe of Nebraska requests that the United States Government not penalize its efforts to increase its economic self-sufficiency and development. The gaming activities will produce income for the Tribe which will be used for legitimate governmental functions along with employment of members of the Tribe. In a time when federal funds are being reduced and a greater responsibility placed on the Tribal Government it is hardly a time to limit the income producing mechanisms from which the Tribe can legitimately exercise its sovereign powers.

Sincerely,

W. Wade Miller

SOUTHERN PUEBLOS GOVERNORS COUNCIL
OFFICE OF THE CHAIRMAN

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ACOMA
COCHITI
ISLETA
JEMEZ

SAN FELIPE
SANDIA
SANTA ANA
SANTO DOMINGO
ZIA
ZUNI

PREPARED STATEMENT OF GOVERNOR ALVINO LUCERO

Mr. Chairman, and Members of the Committee, thank you for this opportunity to appear here today concerning legislation before the Committee regarding the need for federal standards in the regulation of Indian reservation gaming. My name is Alvino Lucero, Governor of Isleta Pueblo and Chairman for the Southern Pueblos Governor's Council. With me is Gilbert Pena, Chairman of The All Indian Pueblo Council of New Mexico, whose 18 pueblos adopted this past October a Resolution in support of passage of HR1920, the "Indian Gaming Regulatory Act," as necessary legislation to establish federal regulatory standards for Indian reservation gaming. Our 10-tribe consortium has two ongoing, successful tribally-controlled bingo operations at Acoma and Sandia Pueblos. My own Pueblo is in the final stages of preparation for start-up of a similarly operated, bingo business at Isleta. Similarly, Santa Ana Pueblo is well along in its efforts to start up a tribally owned racing facility which would have pari-mutual wagering on races.

New Mexico Pueblos now support Senate passage of a revised version of HR1920 as referred to the Committee on April 22 from the House. The revision which we feel is essential is the deletion of any requirement of a moratorium. The All Indian Pueblo Council and the Southern Pueblos Governor's Council oppose any moratorium. Our support is predicated on Senate passage of HR1920 that does not adopt a provision giving the states' jurisdiction for any aspect of Indian reservation gaming. We oppose any state imposed jurisdiction on reservation gaming. Joint powers agreements and other forms of consensual (tribal/state) regulation are different. Those are acceptable.

Attached to this statement is a recent All Indian Pueblo Council Resolution that opposes the four-year moratorium on so-called CLASS III gaming (all forms of gaming other than bingo or ceremonial types) that was subsequently adopted in House passage of HR1920, and the Resolution strongly opposes the administration's bill recently introduced, by request, to this committee.

We support HR1920 because it does not upset the present balance of federal and state jurisdiction on Indian reservations. We do, however, believe it important to note that under current federal law the Pueblos, as sovereign entities, should not be prohibited from exercising their inherent powers of self-government to set up gaming enterprises that are allowable by New Mexico State law and which are not specifically prohibited by Federal law, nor, prohibited by criminal law when conducted within the State of New Mexico. This federal - state jurisdiction balance is delicate on Indian reservations. State assumption of civil and/or criminal jurisdiction over Indian reservations has serious implications for erosion of tribal sovereignty.

In New Mexico, where the state has not intruded into our sovereignty, even during the 15-year period beginning with P.L. 83-280 of 1953 when unbridled right was given all the states for such assumption without tribal concurrence, we are particularly concerned that this legislation not set a precedent for the ceding of future reservation jurisdiction to the states. We ask the Congress, and this Committee in particular, to be extremely vigilant to see that this legislation does not now depart from existing federal, judicial and legislative precedents and, in so doing, eliminate safeguards for tribal sovereignty by allowing the states to interfere with tribal self-government through a specific act of Congress that would modify and reduce this sovereignty.

New Mexico Pueblos urge the committee not to permit state imposed jurisdiction for any Indian reservation gambling, including bingo. Joint powers agreements and other types of consensual arrangements are acceptable as long as they are the result of mutual agreement between affected Tribes and states. The administration bill recently introduced proposes just such an overwhelming departure from the present balance of federal and state jurisdiction on Indian reservations where it states at page 03, of "the Indian Gambling Authorization and Regulatory Act of 1986," Sec. 202, "The purpose of this Act is:

> (c) To provide clearly that gambling in Indian country (other than bingo and ceremonial or social gambling involving only tribal members) is regulated and controlled by state law and that violations of such state gambling statutes in Indian country may be prosecuted in federal as well as state court.

Besides requesting Committee rejection for any proposal to intrude State imposed regulation into Indian reservation gaming, we also urge the Committee to avoid stepping backwards, in federal/tribal relations, through adoption in this legislation of a provision that would give the federal government authority over tribal bingo operator's right to secure, and retain, the kind of key employees who can bring to reservation business a "competitive edge" gained through successful experiences elsewhere.

Specifically, we ask the committee to reject any offering of the provision at page 20, lines 3 through 9, subparagraph 5, of the administration bill. This provision would restrict tribal bingo enterprises from offering "base pay plus percentage of the revenue" to key employees; a standard business practice and a necessity for competitive success in the private enterprise system. To treat tribal bingo enterprises otherwise would be bad business practice and contrary to historical, Congressional policy that has not unduly encumbered tribal, economic activities with Secretarial, or other federal, review and approval. Such a restrictive provision would also be counter to the administration's own (1980's) Indian policy which is to promote tribal self-government and reservation economic self-reliance.

We also oppose any provision in this legislation that would give the Secretary of the interior or the Attorney General the right to dismiss at pleasure, or to appoint, the Indian Gaming Commissioners. (Reference Attachment II to this state, a May 1986 Interior Department letter to the House Speaker transmitting the "Indian Gambling Authorization and Regulation Act of 1986."). Rather, we recommend an amendment to HR1920 that would make Commission members Presidential appointees subject to Senate confirmation. As high-ranking public officials, these appointed gaming commissioners should be subject to Senate scrutiny of their qualifications, health, financial assets and policy orientation. At minimum, the Commission Chairman, with the powers provided by HR1920 as passed the House, should be subject to Senate confirmation.

We propose a final amendment which would bring payment for costs of the commission more in line with other federal, quasi-independent regulatory bodies such as the Federal Trade Commission and the Securities and Exchange Commission. For such fairness, and in recognition of the continuing trustee responsibility which the federal government has for Indian tribes, the Sec. 17(a)(1), page 24, lines 4 through 8, provision in HR 1920 for payment of the costs of the Commission should be deleted and replaced as follows: "the federal government shall provide 50 percent of the commission budget with gaming tribes being levied the remaining 50 percent, but not to exceed two and one-half per centum of the gross revenues from each Indian gaming activity regulated pursuant to this Act."

This concludes our prepared remarks and we would be pleased to respond to any inquiries the Commission may have at this time.

Yours very truly,

Alvino Lucero

Alvino Lucero,
Chairman

AL/ms

ATTACHMENT I

ALL INDIAN PUEBLO COUNCIL

RESOLUTION ON

"Indian Gaming Regulatory Act of 1986"

ALL INDIAN PUEBLO COUNCIL

1986 RESOLUTION #17

WHEREAS, HR1920, the "Indian Gaming Regulatory Act" was introduced on April 2, 1985 by Congressman Morris Udall, Arizona, and amended during mark-up held on December 4 and 11, 1985; and,

WHEREAS, HR1920, SUBSTITUTE the current bill being considered by Congress in proposed to be amended by Congressman Coelho, California which places Class III gaming under the jurisdiction of the States.

NOW, THEREFORE, BE IT RESOLVED that the All Indian Pueblo Council:

1) Supports enactment of HR1920 without States rights amendment because it represents least costly position to Indian Tribes and because the Pueblo are opposed to any unwarranted intrusion upon tribal sovereignty.

2) Opposes introduction and enactment of pendin[illegible]ministration (Interior/Justice) bill because it has provi[illegible] giving States the right to regulate Class III gami[illegible]. calls for stricter regulations and full financial bur[illegible] for Federal regulation to be placed on Indian Tribes.

3) Opposes any amendment to HR1920 "The Indian Gaming Regulatory Act" that would reduce the number of Native Americans on the National Indian Gaming Commission below the representative level in HR 1920 as in H report 99-488.

4) Opposes a moratorium on Class III gambling which is presently proposed as a compromise measure.

5) Requests that the resolution be promulgated to the National Indian Organization for their adoption.

CERTIFICATION

I, the undersigned, as Chairman of The All Indian Pueblo Council do hereby certify that the foregoing Resolution was passed at a duly called of the All Indian Pueblo Council held on April 18th, 1986, at which time a quorum was present with 14 voting for; 0 voting against; and 1 abstaining.

GILBERT M. PENA, CHAIRMAN

ATTEST:

JOHN GONZALES, SECRETARY/TREASURER

Sam A
PUEBLO OF COCHITI

Richard C. [illegible] Lt Gov
PUEBLO OF ISLETA

[illegible] Lt. Gov.
PUEBLO OF JEMEZ

[illegible] - Pueblo Secretary
PUEBLO OF LAGUNA

[illegible] Lt Gov
PUEBLO OF SAN FELIPE

[illegible] Lt Gov
PUEBLO OF SANDIA

[illegible] Montoya Councilman
PUEBLO OF SANTA ANA

[illegible] Quintana
PUEBLO OF SANTO DOMINGO

PUEBLO OF ZIA

PUEBLO OF ZUNI

Absent
PUEBLO OF NAMBE

PUEBLO OF PICURIS

PUEBLO OF POJOAQUE

[illegible] ; 1st Lieut. Gov.
PUEBLO OF SAN ILDEFONSO

PUEBLO OF SAN JUAN

[illegible] Tribal Secretary
PUEBLO OF SANTA CLARA

PUEBLO OF TAOS

PUEBLO OF TESUQUE

[illegible]

ATTACHMENT II

U.S. Department of the Interior
"Transmittal Letter to Congress"
for
"Indian Gambling Authorization & Regulation Act of 1986"

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

MAY 20, 1986

Honorable Thomas P. O'Neill, Jr.
Speaker of the House of Representatives
Washington, D.C. 20515

Dear Mr. Speaker:

There is enclosed a draft bill, the "Indian Gambling Authorization and Regulation Act of 1986." A section-by-section analysis is also enclosed.

We recommend that the draft bill be introduced, referred to the appropriate committee for consideration, and enacted.

Beginning with the decision in Seminole Tribe of Florida v. Butterworth, 658 F. 2d 310 (5th Cir. 1981), several Federal courts have held that State regulatory laws concerning the playing of bingo do not apply on Indian reservations. Accordingly, a number of tribes have begun operating high-stakes bingo games free from any State control. Since there are no Federal laws to regulate this type of activity, the only regulation is that provided by the tribes themselves.

The Seminole Tribe decision has therefore given many Indian tribes a valuable asset — the right to run a profitable gambling operation free from State control. At the same time, high stakes gambling on Indian reservations, just as anywhere else, involves large sums of cash and lucrative peripheral service industries that might draw attention from organized crime. While an Indian-operated gambling operation is no more susceptible to corruption than is gambling run by any other group of persons, the nature of the enterprise requires constant and vigorous regulation and control.

Consequently, the Department of the Interior and the Department of Justice have jointly prepared the enclosed draft bill to strike a balance between tribal interests and State and Federal law enforcement interests. It preserves a valuable tribal asset by subjecting it to Federal regulation.

Under the draft bill gambling would be divided into three categories: (1) purely ceremonial or social gambling; (2) bingo; and (3) "all other" forms. Ceremonial or social gambling would be uncontrolled, except as the tribes choose to control it; bingo would be controlled by a Federal Commission; and "all other" gambling would be controlled by the law of the State where the tribe is located. Thus, gambling such as pari-mutuel wagering, numbers games, lotteries, and the operation of casinos would be subject to State licensing and control. The Federal Government would not be involved in the intricacies of regulating types of gambling which the States have traditionally regulated, and which are not anywhere near as widespread on Indian reservations as is high stakes bingo. In addition, the bill would not allow tribally operated bingo in five States — Utah, Mississippi, Arkansas, Indiana, and Hawaii — which do not allow any sort of bingo. As is explained in the section-by-section analysis, this is consistent with current case law, which allows Indian bingo free from State regulation only in those States which allow and control bingo conducted by other organizations such as churches.

As for bingo, the draft bill would establish within the Interior Department a three-member Commission to license and regulate tribal bingo operations. The Secretary of the Interior would appoint two members of the Commission who would serve at his pleasure; one of whom would be chairman. The third member would be appointed by the Attorney General and would serve at his pleasure.

The Secretary would supply the Commission with the necessary office space and support staff, either by hire or detail. The staff is expected to be small because the Commission would be authorized to contract with Federal, State, tribal, and private organizations to assist in its licensing and inspection functions. All of the expenses of the Commission, except for the salaries of the commissioners and the one-time start-up costs associated with the Commission's drafting of an initial set of regulations, would be borne by the tribes operating bingo. Such tribes would be assessed the costs of investigations necessitated by their license applications and a percentage of their gross bingo revenues to the extent necessary to defray other operating costs of the Commission.

The bill provides that the Commission would draft regulations on a number of subjects, such as management contracts. It also provides for tribal participation in rulemaking and enforcement in some circumstances. The Commission's rules and regulations will take effect only on approval by the Secretary. While the bill would provide for Secretarial review of Commission decisions concerning license applications, approval of management contracts and disciplinary proceedings, the Secretary may, through regulations, decline to review Commission decisions in these areas. Final decisions on licenses, management contracts, and disciplinary actions against licensees and management contractors would, of course, be subject to judicial review. The Department of Justice would represent the Commission in any court proceedings in which it is involved, although the Commission would have a General Counsel appointed by the Secretary independent of the Interior Department's Solicitor's Office.

Finally, the bill would create new Federal offenses for theft or embezzlement of property belonging to licensed bingo establishments and make it explicit that violations of State gambling laws committed on Indian reservations (other than licensed bingo or purely social or ceremonial gambling involving only tribal members) may be prosecuted in State courts.

In sum, this is a comprehensive proposal which appropriately weighs Federal, State, and tribal interests. As indicated, both the Department of the Interior and the

Department of Justice have participated in its drafting and both Departments request that it be promptly introduced, referred to the appropriate committee for consideration, and enacted.

The Office of Management and Budget has advised that there is no objection to the submission of this proposed legislation from the standpoint of the Administration's program.

Sincerely,

JOHN R. BOLTON
Assistant Attorney General
Office of Legislative and
Intergovernmental Affairs
Department of Justice

ASSISTANT SECRETARY ROSS O. SWIMMER

Enclosures

MAY 14 1986

This Act may be cited as the "Indian Gambling Authorization and Regulation Act of 1986."

Title II. Findings and Purpose

Sec. 201. The Congress finds that --

(a) In recent years, numerous Indian tribes have become engaged in or have authorized gambling activities in Indian country.

(b) This gambling is often not subject to state or federal regulation because --

(1) state criminal laws are applicable in Indian country only to the extent that the Congress has provided by legislation that the states, rather than the federal government, should exercise jurisdiction over a particular subject matter;

(2) the federal and tribal governments exercise criminal jurisdiction over crimes committed in Indian country, except in a few situations generally not related to gambling;

(3) federal law often assimilates the laws of the states when there is no federal statute on point; and

(4) several federal courts have held that only state criminal laws are assimilated for enforcement by the federal government in Indian country, that state gambling enforcement statutes are regulatory laws which are not assimilated, and consequently the Indian tribes themselves have the exclusive right to regulate gambling activity which is not prohibited by federal law and which is conducted in a state

PREPARED STATEMENT OF DAN McCOY

CHAIRMAN, TRIBAL COUNCIL

EASTERN BAND OF CHEROKEE INDIANS

Mr. Chairman and distinguished members of the Senate Select Committee on Indian Affairs, I wish to thank you for this opportunity of appearing before you today. I am an enrolled member of the Eastern Band of Cherokee Indians, Chairman of Tribal Council and a member of Tribal government for 12 years.

I am here today as an official of the Eastern Band of Cherokee Indians to testify on behalf of my people regarding the proposed legislation (S.902) to establish an external regulatory body to oversee the operations of bingo and other gaming activities on Indian Reservations.

Mr. Chairman, the tribal members living on the Qualla Boundary in Cherokee, N.C. have benefitted significantly from the bingo operations located on our land. We believe that the proper regulatory body to control bingo and other gaming activities on our reservation is the Tribal Council, whom we elect every two years to enact codes and ordinances to assure our continued progress and protection.

Mr. Chairman, the issue of bingo games and their proposed regulation by external bodies/entities strikes at the heart of the current Federal-Indian policy of self-determination. We sincerely believe that the intent and wisdom of the Congress in enacting P. L. 93-638, the Indian Self-Determination and Education Assistance Act, was the inherent understanding that support of Indian self-government was the correct and best long term solution to the extreme socio-economic conditions that continue to ham-string real economic growth on Indian Reservations. The regulations as promulgated under P.L. 93-638 have been in existence for nearly a decade, still most Indian tribes are generally no better off today than 10 years ago. The notable exceptions are among tribes receiving significant stimulus in economic development from Federal and Tribal investment in diversification, including investments made by infusion of Federal funds or reinvestment from bingo and gaming programs!

On our reservation, I have personally experienced and witnessed the weakening of the promised long term benefits and objectives of P. L. 93-638 under each administration. The Indian people themselves have been disappointed in the Administration's handling of P. L. 93-638. Because of these bureaucratic exercises to continue the federal hold on the economic development, or lack of development, of Indian reservations, the Indian people, through their Tribal Government, have turned to private enterprise for real and true development, and now must even seek to amend the Self-Determination Act, through HR.4174, to receive even minimal services intended by 93-638.

Mr. Chairman, I am pleased to inform you, and the distinguished members of this sub-committee, that the Cherokee Bingo operation has contributed significantly to our community in several ways.

First, Cherokee Bingo provides critical and essential jobs to our people year-round. Our Economy is dominated by tourism from May through October. Other than federal and tribal government jobs, which are scarce, off-season employment is even more unlikely. Thus a year-round job is treasured in our community.

Second, Cherokee Bingo provides nearly a half-million dollars ($500,000) annually in increased direct revenue to the Tribal Council for the continuation of tribal operations, and provides financing of programs sponsored by Council. This amount is in addition to the tribal income, which is gained primarily through application of a 6% Tribal Levy on goods and services purchased on the reservation. This increase has permitted the tribe to build two new industrial buildings to house the USDA program and a cut-and-sew (privately held) business, generating a planned 50 to 100 new jobs. It has also permitted the tribe to supplement the elementary school breakfast program ($10,000), the Senior Citizen Christmas program ($115,000+), High School programs ($53,000), Summer School program for the High School ($26,000), the Sheltered Workshop Program ($30,000)! The list continues! Each contribution establishing its multiplier effect and returning dividends to our community several times over.

Third, the level of assistance provided by the Bureau of Indian Affairs in welfare expenditures dropped by 20% during the first full year of operations by Cherokee Bingo. I have been informed that the request for financial assistance continues to decline. Since this had never happened previously, we can attribute this to the existence and successful operation of Cherokee Bingo, and the 120 to 180 jobs it has directly created.

Fourth, the year-round operation of Cherokee Bingo has produced additional opportunities for reservation and area motels, restaurants, and gift shops to remain open for weekend business. Normally, these Indian owned businesses would close during off-season from October through May. This spin-off effect can only be attributed to a large and continuing special event, such as Cherokee Bingo.

Mr. Chairman, we at Cherokee are very proud of the progress that has been made here over the past thirty years. We attribute this progress to a real partnership between federal and tribal governments and private enterprise. Without one of these partners, I cannot imagine where we would be today. The delicate balance between these forces is maintained by the Tribal Government--the Tribal Council and the Tribal Administration. We believe that our accomplishments in Cherokee, N.C. have demonstrated that the intent of the Congress in enacting P. L. 93-638, established a wise course. We wish to keep it that way.

S.902, similar to HR.1920, is an attempt to establish an Indian Regulatory Commission on Bingo through a voluntary move of some tribal authority for self-determination to that regulatory body. If the organizational structure were to be amended to specify that the 7 voting members of that body were to be selected from and to represent the interests of gaming tribes while also assuring that those 7 members were genuinely disinterested parties to tribal gaming operations, the Commission offers an genuine opportunity for successful regulation.

Any assessment to fund the Commission would be based on gaming program earnings (from independently audited books) rather than on gross, profit margins vary wide among the various gaming programs. While skeptics might fear inflated costs, audits guarantee the outside independance required by other Federal programs dealing with significantly larger amounts and should be more than adequate here.

In closing, Mr. Chairman, I again wish to thank you for this opportunity. I, or other representatives of our tribe, have appeared before you on many occasions and have been rewarded may times by your deep sense of Indian values and clear understanding of our problems. I leave with the trust that you will approach this bill with the utmost in both fairness and sensitivity to our cause. We urge you to support our request that the Tribal Council of the Eastern Band of Cherokee Indians remain as the regulatory body in control of the operations of Cherokee Bingo.

Dan McCoy
Dan McCoy, Chairman Tribal Council

Jesse Murphy, Birdtown Community

Gerard Parker
Gerard Parker, Painttown Community

Richard Bird, Painttown Community

Leon Jones, Wolftown Community

Carroll Parker
Carroll Parker, Wolftown Community

Abe Wachacha
Abe Wachacha, Robbinsville Rep.

Glenda Sanders
Glenda Sanders, Cherokee County

Bertha Saunooke
Bertha Saunooke, Yellowhill Comm.

Richard L. Welch
Richard Welch Yellowhill Community

John Standingdeer, Big Cove Comm.

Wilbur Sequoyah, Big Cove Community

PREPARED STATEMENT OF RONALD FIXICO

Mr. Chairman and Honorable Committee Members of the Senate Select Committee on Indian Affairs, I am Ronald Fixico, Chairman of the United Indian Nations in Oklahoma Gaming and Taxation Committee. I forward to you today greetings from the twenty-three (23) member tribes, bands and nations of the United Indian Nations in Oklahoma:

The Eastern Shawnee Tribe
The Delaware (Eastern) Tribe
The Kiowa Tribe
The Iowa Tribe
The Muscogee (Creek) Nation
Thlopthlocco Tribal Town
The Caddo Tribe
The Seneca Cayuga Tribe
The Apache Tribe
The Chickasaw Nation
The Kaw Tribe
The Tonkawa Tribe
The Absentee-Shawnee Tribe
The Delaware (Western) Tribe
The Pawnee Tribe
The Otoe-Missouria Tribe
The Fort Sill Apache
The Ponca Tribe
The Sac & Fox Tribe
The Wyandotte Tribe
The Cheyenne-Arapaho Tribe
The Comanche Tribe
The Seminole Nation

The federal proposed National Indian Gaming Commission represents the practical effort of practical men to deal with the supposed problems of the Indian gaming industry wherein the greater society is presented with too many conflicts of interest. If the effort is staffed with a reasonable proportion of intelligent, conscientious and fairminded men, the development of the administrative process will take care of itself.

The quality of the administrative performance in the overview of this industry will reflect not only that of the men who run it, but also that of the men who appear before it. It will be hard for the National Indian Gaming Commission to measure up to its responsibilities, if its practitioners and its critics seek to submerge it in the color of state policy, against the substantive federal court decision or the executive policies that influence Indian affairs in this Nation.

The regulatory program, which this country has elected to enact, cannot do its work effectively without the cooperation of all parties under its administration. However, it is just such issue at hand, the Indian gaming industry, limited issue that it is, which is open to opinion before this Senate Committee. When we contribute to this side of the Senate workload, it is with some degree of earned expertise that we, the United Indian Nations in Oklahoma, offer our view of issues relevant to gaming.

An administrative agency is created whenever governmental actions is required in an area presenting conflicting interests either between individuals or between an individual and the government, which a purely judicial solution of the conflict would leave as unsatisfactory. The feature which makes judicial administration inappropriate can be, for example, the need for rule-making, a governmental interest in the furtherance of a program, the volume of business, or a conflict which is outside the usual case or controversy pattern.

Problems not easily handled by the regular branches of government have been met by a reliance on the administrative process. Most action in our complex society must be done by specialized agencies.

The rationale for the creation of independent Indian gaming commission(s) has been the restriction of certain abusive business practice. We of the Indian gaming industry in Oklahoma are aware of the state's attempt to label our operations as public nuisances. We are conscious that interest groups, however patriotic, they may be, are not a level above the moral and financial causes of our own. And indeed, we are conscious of inuendo from whatever source that would attempt to stigmatize and discredit our tribal gaming operations as "organize crime" connected.

Against such claims we, the United Indian Nations in Oklahoma, assert the following which is the preamble of our own proposed UINO Indian Gaming Commission we are in the process of forming.

PREAMBLE

The continued existance of free and sovereign Indian Nations depends upon recognition of the concept that the Indian people have the right and self-duty to secure the respect and dignity for the individual and his tribe through self-determination and reason for enlightened self-government. Actions so grounded makes prosperity possible, for only through such action does the dignity of the Indian people attain respect and protection.

Gaming as a source of revenue plays a vital role in the preservation of Indian self-government. The fulfillment of this role requires an understanding by those participating of their relationship with and function in the Indian macro-economic system. A consequent obligation of the Indian tribes, band and nations in Oklahoma is to maintain the highest standards of ethical conduct.

The Code of the Professional Indian Gaming Industry points the way to the aspiring and provides standards by which to judge the transgressor. Each tribe, band or nation must find within its own conscience the touchstone against which to test the extent to which its actions should rise above minimum standards. But in the last analysis it is the desire for the respect and confidence of the Indian people to which it is so obliged and to the public which it serves that should provide the incentive for the highest possible degree of ethical conduct. The possible loss of that respect and confidence is the ultimate sanction. So long as the Professional Indian Gaming Industry is guided by these principles, the industry will continue to be a respected source of income, while it maintains and safeguards the integrity, fairness and honesty of gaming activity on Indian lands held in trust by the United States government, with no compromise.

****

The federal courts have paid a consistent tribute to the rights of the Indian people(s) to conduct gaming affairs within Indian Country. This judiciary finding are more than provincial decisions. The legal questions answered in conflicting interests between the state's position and the right of the tribal governments to legislate and regulate gaming in Indian country leaves a clear impression that the Indian regulatory bodies have proven ourselves quite capable to minding our industry. It is thru the efforts of the United Indian Nations in Oklahoma, that tribal gaming operations do not necessarily meet state standards regarding bingo, but thru responsible, tribal efforts we have uniformly exceeded state standards. Indeed, we would be remiss to the Indian people who have trusted in us to secure the dividends of this industry, if we took less than a posture of adamant responsibility in this vital income source, which our people are dependent upon.

Recent federal court decisions in Oklahoma reduce or eliminate the doubt of any sceptic but would not and could not alter or change opinions set against these judicial findings.

Meanwhile, various sources propose federal regulatory activity assessments to be levied against tribal gaming operations at different percentages of gross. We, the United Indian Nations in Oklahoma, oppose any levy sanctioned by Congress wherein the scope of review activity passes from local jurisdiction and Indian review and control of expenditures. Further, it should be realized that any assessment for regulatory activity is directing money from essential tribal governmental functions and services. Opposition and resentment to a proposed National Commission on Indian gaming is inherent under such a devised scheme. Truly, the scope of relief granted the tribal government in federal court decisions to protect itself is lessened when revenue loss is brought on by congressional intervention where it is unwelcome; and justifiably resented by tribes attempting to make ends meet.

It is exactly such constraints upon the freewill and lives of men that cause them to gather, united in cause, to found in necessity a union entity to provide for themselves and their kind. As often as it pleases this government to intervene in the affairs of the Indians, bands, tribes and nations in Oklahoma, we shall keep our property, resources, and revenues judiciously guarded from criminal or governmental intervention to the extent of our abilities.

The Indian tribes, bands and nations in Oklahoma have a clear interest in resenting intrusion and attacks into our industry and any insinuation that the many lawabiding citizens, many who happen to be non-Indians are somehow contributing to the growth of organized crime in America by gaming with us. Surely, the public is very interested in whom it is that is alleging they have been made part of a grand scheme to contribute to criminal acts and corrupt practices.

If I were a non-Indian gaming within Indian country, operation witness to present circumstances regarding tribal gaming and abiding of federal court decisions, I would certainly desire the indentity of any individual, state or entity alleging yet not proving that I helped to assist crime.

The passive attitude of these United Indian Nations in Oklahoma is coming to a close. The Congress of the United States should welcome the opportunity to assert some authority via a regulatory commission to lay to rest unfounded allegations against the Indian gaming industry. We, the United Indian Nations in Oklahoma, are programming towards establishing what is necessary to protect gaming in our Indian country.

In summary, it is the position of the United Indian Nations in Oklahoma that friction between the state and other entities against gaming in Indian country can best be treated with fairness by federal intervention consistent with federal court findings. Further, we oppose any levy against tribal operations as being unbearable while present economic conditions exist and present federal cutbacks continue to slowly renege on treaties made between the sovereign Indian nations and this federal government. Further, we continue to holdfast to our position that Indian gaming presently is conducted and regulated on a far higher level of compentency than state regulated gaming activity. We, the United Indian Nations in Oklahoma, in the process of developing uniformity in our industry believe we are capable of regulating gaming activity in Oklahoma in any area we so desire to exercise our sovereignty, when such choice is compatible with federal, not state law.

In closing we believe ourselves to be not limited in our abilities but unlimited and a very capable, industrious, unique, citizenry within this country that chooses to exercise our rights and privilege to take the Indian gaming industry to a more sophisticated level of regulatory conduct with or without state consent. We desire to enhance the legitimate gaming activity in Indian country and to assist its growth whenever possible because we believe we are sovereign within limits set by Congress and by no others.

The United Indian Nations in Oklahoma forwards to you, the legislators and law makers, to the Indian gaming industry not a blind and unreasoning commitment of support, but a wish to success. The Indian people of Oklahoma desire to continue to bring forth essential revenues from this legitimate industry they have embraced.

Thank you for extending to me the opportunity to present the views of the United Indian Nations in Oklahoma in these important matters.

Respectfully,

Ronald D. Fixico

Ronald D. Fixico, Chairman
Gaming and Taxation Committee
United Indian Nations in Oklahoma

MUSCOGEE (CREEK) NATION

P.O. BOX 580
OKMULGEE, OK 74447
(918) 756-8700

June 17, 1986

Senator Mark Andrews, Chairman
Senate Select Committee on Indian Affairs
SH 838 Hart Senate Office Building
Washington, D. C. 20501

Greetings:

Thank you for allowing the Muscogee (Creek) Nation to present testimony on issues relating to the regulation of tribal gaming.

Because I cannot be present, Mr. Perry Beaver, Muscogee (Creek) Nation Second Chief, will present our view and recommendations. Within the past year, our tribal rights have been tested in high court. We have succeeded in proving our soveriegnty is legitimate, and in turn gave the state of Oklahoma a much deserved history lesson, but it was a costly drain on our tribal government.

As we stated in our testimony, we now believe federal legislation for Indian gaming is evident and should be brought about in an expedited manner, allowing our recommendations are considered in HR 1920, the Muscogee (Creek) Nation could survive the gaming regulation legislation.

Respectfully,

Claude Cox

Claude Cox
Principal Chief
Muscogee (Creek) Nation

PREPARED STATEMENT OF PERRY BEAVER

For the past year and half, the Muscogee (Creek) Nation has been actively engaged in the operation of a bingo facility; therefore, our comments on HR 1920 and other related proposed legislation to federally regulate Indian gaming are essential to the well being of our tribal venture.

The Muscogee (Creek) Nation recognizes the obligation of the federal government to regulate industry for the benefit of the people. Likewise, we as the sovereign government for our tribal citizens also recognized this obligation to our people and to our patrons when we planned the operational structure of the Creek Nation Bingo.

We have set a plan in motion through the Creek Nation Gaming Commission to eliminate the element of chance for organized crime to infiltrate our viable economic resource. Through a high level of involvement the Creek Nation Gaming Commission conducts a monitoring system that stringently adheres to the provisions of the Creek Nation Gaming Code (document attachment #1, NCA84-04, An Ordinance of the Muscogee (Creek) Nation to Regulate Public Gaming Within the Creek Nation), which has been approved by the Muscogee National Council and the Bureau of Indian Affairs. This code not only provides for the fair practice of gaming, but the safety and welfare for employees and patrons through provisions for such things as fire prevention, first aid, sanitation and waste disposal, food handling, etc. The Gaming Commissioner insures these provisions are carried out daily.

This method of regulation compliance and the legality of sovereign jurisdiction was recently tested in the United States District Court for the Northern District of Oklahoma when the Oklahoma Tax Commission and the Tulsa District Attorney filed an injunction against the Creek Nation Bingo for an exhorbitant amount they claimed was subject to state taxation and the abased claim that our establishment was a 'public nuisance'.

Because of this state action, the tribe was forced to employ legal counsel at a cost of many thousands of dollars. After extensive investigation, the Tulsa District Attorney's office testified that they could find no evidence of organized crime in the operation of Creek Nation Bingo. In Judge James Ellison's written opinion and order, (document attachment # 2) he cited, (page 17, footnote 12) "The Gaming Commission and his staff have the right at all times to complete overview of the bingo operation." He also found the Creek Nation operating within their legal jurisdiction and the state not apply its sales and use tax laws against the Creek Nation or its tribal enterprise, nor regulate the bingo activities taking place on Creek lands, (attachment #2, page 13).

He further ordered, not to interfere in any way with the peaceable operation of such games, or to padlock or otherwise attempt to close or impair the operations of the tribal bingo enterprise; and to the Oklahoma Tax Commission to refrain from entering onto the lands of the tribal bingo enterprise.

This superfund legislation caused by the state of Oklahoma, plus the fact that they have filed an appeal, and the recent request from twenty State Attorney Generals for the United States Supreme Court to decide whether state and local governments may regulate Indian Bingo games, leads the Muscosgee (Creek) Nation to believe federal regulation is necessary and should be completed in an expedited manner. However, there are overriding elements we wish to make issue with on the regulatory process in HR 1920,S902 and the Administrtion's proposed bill.

ISSUES AND RECOMMENDATIONS:

1.) Sec.3 (a) -This proposed boundary policy has already created problems with the trust status issue; in that, the Assistant Secretary of the Interior is disregarding the tribe's historical boundary to be inclusive of our entire nation. Since the tribe owns parcels of land within our boundary, the Assistant Secretary will not place these locations into trust because some ofthem are not adjacent to existing trust properties. For the past 15 years, the Muscogee (Creek) Nation has been acquiring once owned property to rebuild our tribal land base. The Assistant Secretary's failure to comply with the trust responsibility has impeded our tribal economic development. **The Muscogee (Creek) Nation feels the Assistant Secretary is using the proposed policy in the wrong light and his imposition is creating a hardship on our tribal government. The Muscogee (Creek) Nation recommends Sec. 3(a) HR 1920, be amended and the language added to include "With the exception of Oklahoma tribes; any land within their historical boundaries may be placed into trust status."**

ASSESSMENTS:

2.) HR 1920 Sec. 17 (a) and S 902 Sec. 11(e)- The Muscogee (Creek) Nation strongly objects to full assessment from tribal gaming enterprises to fund the commission's budget. **We recommend a sustantial portion of the Commission's budget as being part of the federal budget because most of the Commission's role is to exercise trust functions normally carried out and paid for in the Department of the Interior.**

COMMISSION APPOINTMENTS:

3.) HR 1920 Sec. 4 (b)- The Muscogee Creek Nation is concerned about the Assistant Secretary having the ultimate power over the Commisison because he has publicly critized Indian Bingo in the press, stating: 'It is the wrong kind of tribal economic development because it doesn't encourage the work ethic." (Tulsa Tribune, Washington AP, 12-23-85): and, "Perhaps bingo is a stepping stone, but it can be a stopping point as well." (Daily Times, Washington Bureau by Steve Tetreault, 10-17-85). These statements combined with our own tribal dealings with the Assistant Secretary influence the tribe's thinking that the **preeminent authority of the Commission should be within the membership and we also recommend a majority Indian membership, with the members being selected on a regional basis thus assuring the Muscogee (Creek) Nation's interest, as well as other Oklahoma tribal interests, are reflected by the Commission.**

INDIAN GAMING AUTHORIZATION AND REGULATION ACT OF 1986:
(Administration's proposed legislation as presented to Congress, May 1986)

The Muscogee (Creek) Nation questions the intent of this proposed legislation and feels it will be devasting to tribes if enacted. **The proposed legislation too narrowly defines bingo operations and is an inappropriate and unlawful intrusion onour tribe's sovereign right to govern our own activities by placing gaming control within state jurisdiction. (See attachment # 2 in its entirety)**

Again, thank you for the opportunity for the Muscogee (Creek) Nation to express our views about Indian gaming regulation.

ATTACHMENT # 1

MUSCOGEE (CREEK) NATION

TRIBAL GAMING ORDINANCE NCA 84-04

As Amended
by NCA 85-74
Dec. 2, 1985

Certified Copy

NCA 84-04

AN ORDINANCE OF THE MUSCOGEE (CREEK) NATION REGULATING PUBLIC GAMING WITHIN THE MUSCOGEE (CREEK) NATION

Section 100. Be it enacted by the Muscogee Nation in Council Assembled:

TITLE I. - GENERAL PROVISIONS

Section 101. Findings. The National Council finds that:

A. Under the 1979 Constitution of the Muscogee (Creek) Nation, the National Council may legislate upon subjects to become Ordinances of the Nation, including:

(1) To promote the public health and safety, education and welfare that may contribute to the social, physical well-being and economic advancement of citizens of the Muscogee (Creek) Nation. [Article VI, Section 7(a)].

(2) To create authorities with attendant powers to achieve objectives allowed within the scope of this Constitution. [Article VI, Section 7(i)].

(3) To exercise any power not specifically set forth in this Article which may at some future date be exercised by the Muscogee (Creek) Nation. [Article VI, Section 7(j)].

B. The present needs of the Muscogee people include employment and training, health care, educational opportunities, nutrition, mental health, juvenile services, housing, planning and development, legal services, elders programs and social services which are not presently being met in sufficient quantity by United States government agencies.

C. The Muscogee Nation desires to be self-sufficient in its internal affairs, as reliance upon federal resources has been adverse to the quality of life within this tribe in both the recent and far past.

D. The regulation of public gaming within the Muscogee (Creek) Nation is in the interest of the Muscogee people and their health and welfare.

E. The Muscogee Nation, prior to the creation of the State of Oklahoma, prohibited public gaming operations under Article X, Section 1 of the 1880 codification of the Constitution and Laws of the Muscogee Nation, as follows:

> "Any person who shall willfuly, by word or deed, disturb any private or public boarding or day school, church, council, or any other religious, political or other lawful gathering, or private family, ... or keep houses of ill fame, or gambling houses, shall be guilty of misdemeanor, and upon convictions shall receive fifty lashes on the bare back."

F. Public gaming operations have been introduced to the Muscogee Nation under the color of the State of Oklahoma, and it is of vital interest to the public health, safety and welfare of the Muscogee people that the Nation, instead of again prohibiting public gaming operations, regulate public gaming in a manner commensurate with the interests of the Muscogee people.

G. By virtue of the treaties between the United States of America and the Muscogee (Creek) Nation and the Statutes and Court decisions of the United States, which together have established and maintained the doctrine of Indian sovereignty, there is left intact the federal guarantee of the perpetual integrity of the Muscogee (Creek) National Government.

H. The Muscogee (Creek) National Government requires methods for establishing a base to generate revenues for self perpetuation and essential governmental services.

Section 102. Short Title. The Code shall be known and may be cited as the Muscogee Nation Public Gaming Code.

Section 103. Definitions. The following words and phrases when used in this Code shall, for the purposes of this Code, have the meanings respectively ascribed to them in this Section, except where the context otherwise requires:

A. "Gaming" is the act of paying for the opportunity and participation in a game or games of chance for money or something of value, where motor skills play no part or are of no consequence in determining the outcome of the game.

To operate, carry on, conduct, maintain, or expose for play: money, property, or any representative of value; wherein the outcome of a game is decided by chance or in which chance is a material element, but does not include social games played solely for consumable goods, i.e. foodstuff or games played in private homes or residences for prizes or games operated by charitable and educational organizations; which are approved by the Commissioner pursuant to provisions of NCA 84-04.

B. "Shall" is used in this Code as imposing an obligation to act.

C. "Commissioner" is the Commissioner of Public Gaming as provided by the terms of this Code.

D. "Bingo" is the activity commonly known as 'bingo' where participants pay a sum of money for the use of one or more cards. A winning pattern is announced prior to each game. When the game begins, numbers are drawn by chance, one by one and announced. The players cover or mark those numbers in the pattern which has been pre-announced for that particular game. This player calls out "bingo" and is declared the winner of a predetermined prize.

E. "Instant Bingo" is the activity wherein participants pay a sum of money for the use of one or more cards. Winning patterns are announced upon the card. When one card is played, paper tabs are pulled off of the card board backing to reveal the patterns printed on the cardboard card. If a player receives patterns which are printed as an "Instant Bingo", the player turns in the card for a predetermined prize.

F. "Parimutuel horse racing" is the activity wherein participants bet a sum of money, in predetermined increments, to wager on which horses shall place first (or "win"), second (or "place"), or third (or "show") in a race for a predetermined distance. If a horse is determined to have properly won the first, second, or third place in the race, the participants who have be upon that horse are paid upon their wager according to formulas approved under the laws of the State of Oklahoma. Players may also be paid upon a combination basis or upon a mutual field basis.

G. Muscogee (Creek) Nation - is as established by the Muscogee (Creek) Constitution of 1979 with political jurisdiction as described in Attachment A. Individual tribal towns of the

Muscogee (Creek) Nation are considered component, inseparable subdivisions of the Muscogee (Creek) Nation and may only benefit from the rights and privileges from the Muscogee (Creek) Nation under this Code, when they are chartered as a community organization under the laws of the central government of the Muscogee (Creek) Nation.

H. "Permit" - license or instrument granted by the official(s) of excise certifying that the duties on certain goods have been paid or secured and permitting their removal from some specified place to another.

A written license or warrant issued by a person in authority empowering the grantee to do some act not forbidden by Muscogee (Creek) Nation law but not allowable without such authority.

I. "License" - the permission by authority of the Muscogee (Creek) Nation to do an act, which without permission could be illegal.

A permit granted by the Gaming Commissioner of the Muscogee (Creek) Nation for a consideration to a person, group, community, firm, or corporation to pursue some occupation to carry on some business subject to regulation under the jurisdiction of the Muscogee (Creek) Nation.

License, with respect to real property of the Muscogee (Creek) Nation, is a privilege to go on the premises for a certain purpose but does not operate to confer on, vest in, or license any title, interest, or estate in such property.

J. "Hearing De Novo" - a new hearing or a hearing for the second time contemplating an entire trial in the same manner in which matter was originally heard and a review of previous hearing.

Section 104. Liberal interpretation. The provisions of this Code, being necessary for the welfare of the tribe and its inhabitants, shall be liberally construed to effect the purpose and object hereof.

Section 105. Effect of headings. Article and section headings contained herein shall not be deemed to govern, limit, modify or in any manner affect the scope, meaning or intent of the provisons of any article or section hereof.

Section 106. Penalty provisions. It shall be a violation of the laws of the Muscogee Nation to violate the provisions of this Code, any regulations promulgated by the Commissioner, or any proper order issued under the authority of this Code. Any person or licensee so violating shall be punished by a fine of not more than Five Hundred Dollars ($500.00) or by suspension of license for a period not to exceed One Hundred Eighty (180) days or by both such fine and suspension or other penalty alternative under Tribal law.

Section 107. Severability. The provisions of this Code are severable and if any part or provision hereof shall be held void by tribal or federal court, the decision of the court so holding shall not affect or impair any of the remaining parts of provisions of the Code.

Section 108. Repeal. All titles, chapters, articles and sections of Tribal Ordinance NCA 82-33, as amended which are in effect as of the date this Code becomes operative, are hereby repealed, and all other laws or parts of laws inconsistent with the provisions of this Code are hereby repealed.

Section 109. Effect of repeal. Repeal by this Code of any Ordinance shall not have the effect of reviving any prior law theretofore repealed or suspended by such repealed Code.

Section 110. Emergency. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason thereof this Code shall take effect and be in full force from and after its passage and approval.

TITLE II. - DEVELOPMENT, ADMINISTRATION AND ENFORCEMENT

Section 201. Office of Public Gaming Commissioner Established. In order to provide for the orderly development, administration, and regulation of Bingo, as well as other authorized enterprises within the exterior boundaries of the Muscogee Nation, there is established the Muscogee (Creek) Public Gaming Commissioner (thereinafter referred to as the "Commissioner"). The Principal Chief shall nominate a full citizen of the Muscogee Nation to serve as the Commissioner, subject to confirmation by Ordinance. Said Commissioner may be seated for a period of three (3) years. The Commissioner may be removed from office prior to the end of any term only for cause under the Removal for Office Ordinance, NCA 81-03, or may be removed by Ordinance. The Commissioner may be suspended by the Principal Chief for 90 days, and the power of the Principal Chief to commission during a vacancy is extended to include commission of a full citizen to serve during the suspension of any Commissioner.

Section 202. The Commissioner may not hold other tribal positions except temporary duties assigned by Executive Order to be performed without increase in compensation and may be engaged in business. Provided, however, that the Commissioner shall not engage in any business which is subject to provisions of this Code or which has commerce with any licensee under this Code. The Commissioner shall post a bond with the Muscogee Nation in the amount of One Hundred Thousand Dollars ($100,000.00).

Section 203. A. The Commissioner shall be charged with the sole responsibilities of administering and enforcing the provisions of this Code.

B. It shall be the responsiblity of the Commissioner to promulgate regulations necessary to administer the provisions of this Code. These duties shall include but not be limited to the following:

(1) Printing and making available application forms for initial and renewal licenses, as well as any other necessary licenses.

(2) Supervising the collection of all fees and taxes prescribed in this Code.

(3) Processing all license applications.

(4) Issuing licenses;

(5) Determining applicable license fees;

(6) Auditing all returns;

(7) Review all gaming operation contract records, documents, and anything else necessary and pertinent to the financial accountabilities of licensees or enforcement of any provision of gaming operation contracts, agreements, this, and related Ordinanc

(8) The Commissioner shall have the power and authority to deny any application, to limit, condition, suspend or restrict any license or permit, make a finding of suitability or approval of the license or permit or a finding of suitability or approval of or the imposition of a fine upon any person licensed or permitted for any cause deemed reasonable by the Commissioner.

(9) The performance of any other duties required in the Code or any amendments thereto or other duties which may hereafter be specified by the Commissioner.

(10) Employ legal counsel with consent of the Muscogee Nation by Ordinance.

(11) Defend this Code in any Court of law.

Section 204. The Commissioner may exercise any proper power and authority necessary to perform the duties assigned by this Code, and is not limited by any enumeration of powers in this chapter.

Section 205. The Commissioner may refuse to reveal, at any court proceedings, the identity of any informant, if such revelation would subject the informant to bodily harm.

Section 206. Regular and special meetings of the Commissioner may be held, at the discretion of the Commissioner, at such time and places as may be convenient and open to tribal members, with notice posted in a public place at least 24 hours prior to the meeting.

Section 207. The Commissioner may organize any functional divisions as may be necessary and from time to time alter such plan of organization as may be expedient. The Commissioner shall recommend this office's own budget for operations to the Principal Chief, and take any other steps necessary to fulfill duties and responsibilities under the code.

Section 208. In adopting, amending, or repealing any regulations under this Code, the Commissioner shall give prior notice of the proposed action to all licensees and other persons whom the Commissioner has reason to believe have a legitimate and bona fide interest in such proposed action.

Section 209. The Commissioner shall afford an applicant for a license or permit an opportunity for a hearing prior to final action denying such application and shall afford a licensee or any other person(s) subject to this Code the opportunity for a hearing prior to taking final action resulting in terminating, revoking, suspending, or limiting a license or permit or any other adverse action the Commissioner deems appropriate; Provided, that the Commissioner may summarily temporarily suspend or extend suspension of license for sixty (60) days or withdraw a permit in those cases where such action is deemed appropriate by the Commissioner. In cases where a license is suspended or a permit withdrawn prior to a hearing, an opportunity for a hearing shall be provided.

Section 210. Whenever upon specific factual finding the Commissioner determines that any person has failed to comply with the provisions of this Code or any regulation promulgated hereunder, the Commissioner shall make a certification of findings with a copy thereof to the subject or subjects of that determination. After five (5) days notice and within ninety (90) days thereof, the Commissioner shall hold a hearing at which time the subject shall have an opportunity to be heard and present evidence.

Section 211. At such hearing it shall be the obligation of the subject to show cause why the determination is incorrect, why the application in question shall not be denied, why the license, licenses, or permit in question shall not be revoked or suspended, why the period of suspension should not be extended, or to show cause why special conditions or limitations upon a license or permit should not be imposed, or to show cause why any other action regarding any other person or persons subject to any action should not be taken.

Section 212. Following such hearing the Commissioner shall, within seven (7) days, reach a determination concerning the accuracy of the preliminary certification of facts and whether the license or permit in question should be granted, continued or suspended, revoked, conditioned or limited, and whether or not any other action recommended to or by the Commissioner (including but not limited to forfeitures or fines) should be taken.

Section 213. Within three (3) days following this determination the Commissioner shall inform the subject in writing of that determination.

Section 214. Right to appeal. The subject shall have the right to appeal the determination of the Commissioner to the Tribal District Court for a de novo hearing. Such appeal must be filed with the Tribal District Court in written form on or before the tenth (10) day following the determination of the Commissioner. The determination of such appeal by the Tribal District Court shall be subject to review or appeal to the Tribal Supreme Court as provided under Tribal Ordinance.

Section 215. Sanctions. Any person who engages in activities on property subject to the provisions of this Code without a license or permit, in violation of the terms imposed thereon, in violation of terms of suspension, or in violation of any other provision of this Code, regulations promulgated thereunder or amendments thereto, shall be in violation of the Code including any person who unlawfully trespasses upon any premises licensed by this Code without the consent of the licensee and/or the Commissioner. Separate violation shall be prosecuted as separate offenses. Each day of violation shall constitute a separate count or violation of this Code. A violator shall also be required to pay court costs, storage fees, auction or sales fees. All property used in each and every separate violation of this Code may become the property of the Muscogee Nation. Persons may be prohibited from trespassing on premises licensed under this Code; licenses may be suspended, or revoked, or limited, and/or establishments may be forceably closed. All such action shall be taken at the discretion of the Commissioner subject to the right of appeal to Tribal District Court. Winnings found to have been received in violation of this Code are forfeited and become property of the Muscogee Nation, recoverable by order, judgement, and execution of the Tribal District Court as provided by Ordinance.

TITLE III. - LICENSING/PERMITS

Section 301. License required. Any person conducting Public Gaming operations on property within the exterior boundaries of the Muscogee Nation and which is subject to the jurisdiction of the Muscogee (Creek) Nation shall be required to have and display prominently an appropriate, valid and current Public Gaming license issued pursuant to the provisions of this Code. Any other forms of Public Gaming operations being conducted wit the jurisdiction of the Muscogee Nation without the lawful writ approval of the Muscogee (Creek) Public Gaming Commissioner are prohibited under Title IX.

Section 302. Classes and Fees. Different Classes of licenses a be issued, and each have a separate fee, and each shall separate privileges. Each license shall be for a specifi ice, and licensees desiring to operate multiple locations shall equired to obtain multiple licenses. Licensee shall operate a onduct only those activities authorized under each license a sted below and as may be further spe ified in regulations pro sted hereunder:

A. Class "A". A Class A Li se may be issued to the ek Nation Festival Committe or the Creek Nation o Committee, at an annual fe of $100.00, for the revoc e privilege of conducting bin games for the remainder of e Ca dar year.

B. a "C". A Class C Lice may be issued to any appl ogee (Creek) Indian tered community, church,

ceremonial ground at a monthly rate of $10.00, for the revocable privilege of conducting bingo games during the remainder of that calendar month.
Class "C-2". A Class C-2 License may be issued to tribal entities, where the use of tribal funds are involved, at an annual rate of $25.00 for the revocable privilege of conducting bingo games during the remainder of the calendar year.

C. Class "N". A Class N License may be issued to any person or group which holds a valid bingo license from the State of Oklahoma or its political subdivision, at an annual rate of $600.00 or a monthly rate of $50.00 for the revocable privilege of conducting bingo games for the remainder of the licensed period.

D. Class "P". A Class P License may be issued to any person or group which holds a valid parimutuel horse racing license from the State of Oklahoma or its political subdivision, at an annual rate of Ten Thousand Dollars ($10,000), for the revocable privilege of conducting parimutuel horse races for the remainder of the calendar year.

E. Class "T". A Class T License may be issued to an entity holding a contract with the Muscogee Nation, at an annual rate of $1,200.00 for the revocable privilege of conducting bingo games in a specific location within the reservation of the Muscogee Nation for the remainder of the calender year.

F. Reserved classes. All other classes of licenses of public gaming are reserved from approval by the Commissioner. The Muscogee Nation hereby reserves for itself a Class D License for conducting parimutuel dog races. Said license shall require approval by and Ordinance of the Muscogee Nation.

G. Amendment of Classes and Fees. Amendments of Section 302 of this Code shall become effective on January 1 of the following calendar year.

Section 303. Exemptions. The following activities are not public gaming operations under the terms of this Code, and therefore do not require a license under this title:

A. GAMING NOT FOR GAIN. Gaming in which no cash or valuable prizes are won, other than 'points' for cumulative competive ratings, or 'places' for immediate competive rankings, is not subject to the provisions of this Code. However, gaming for gain which is conducted by a non-profit organization is subject to the requirements of this Code if cash or valuable prizes are awarded. "Valuable prize" means an object or service worth One Hundred Dollars or more in fair market value.

B. [Reserved]

Section 304. All persons or organizations, who may seek to engage in Public Gaming activities within the Muscogee Nation, must apply for the same at least thirty (30) days prior to the scheduled activities. All other licenses must be applied for no less than sixty (60) days prior to the scheduled activities.

Section 305. Every licensee intending to continue engaging in Public Gaming activities within the Muscogee Nation during the next following calendar year shall apply for renewal of the license at least thirty (30) days prior to the end of the previous license period.

Section 306. Every licensee shall display in a prominent place a current and valid license for that location.

Section 307. When a licensee changes a location of Public Gaming activities within the Muscogee Nation, the Commissioner shall issue a corrected license for the balance of the current period reflecting the new address upon reasonable proof of change of address and wihtout imposition of an additional license fee.

Section 308. Fees. Each application for an initial or renewal license shall be accompanied by payment of the license fee. Subject only to the appeal as provided under this Code, the Commissioner's determination of the license fee properly owed under this Code shall be final. This fee is imposed for the revocable privilege of being licensed to engage in public gaming activities within the Muscogee Nation.

Section 309. Non-tranferability. The license issued pursuant to the provisions of this Code is valid only for the person(s) or organization(s) at the place of business shown on the face thereof. It is not assignable or otherwise transferable to any other person or organization or for any other location without the written approval of the Commissioner.

Section 310. All license fees shall be paid to the Treasury of the Muscogee Nation.

Section 311. The Public Gaming Operations license is a revocable privilege, and no holder thereof shall be deemed to have a part in any vested rights therein or thereunder. The burden of proving qualifications to hold any license rests at all times in the licensee. The Commissioner is charged by law with the duty of continually observing the conduct of all licensees to the end that licenses shall not be held by unqualified or disqualified persons or unsuitable person or persons whose operations are conducted in an unsuitable manner.

Section 312. Violation of any provisions of this Code or any of the Commissioner's rules by a licensee, his agent, or employee shall be deemed contrary to the public health, safety, morals, good order, and general welfare of the Muscogee Nation and the inhabitants of the Muscogee Nation, and grounds for refusing to grant or renew a license, suspension or revocation of a license or ground for the filing of criminal charges or civil action in Tribal District Court on behalf of the Commissioner. Acceptance of a license or renewal thereof, or condition imposed thereon, by a licensee constitutes an agreement on the part of the licensee to be bound by all the regulations and/or conditions of the Commissioner and by the provisions of this Code as the same are now or may hereafter be amended or promulgated. It is the responsibility of the licensee to keep himself informed of the contents of all such regulations, provisions, and conditions, and ignorance thereof will not excuse the violations.

Section 313. As a provision of licensing, all contracts or agreements with the Muscogee Nation that include gaming or related activities must be reviewed by the Commissioner.

Section 314. Permits Required. Any activity conducted on tribal trust property in relation to or in conjunction with a licensed function shall be required to obtain either a limited/temporary or annual permit.

Section 315. Permit Class and Fees. Different permit class and fees shall be established by regulation of the Commissioner for all activities and devices listed shall include, but not limited, to the following activities and devices:

A. Activities:

1. Games or activities for periods of less than seven (7) days or one time.

2. Games or activities on an annual or semi-annual schedule.

Games or activi[illegible]es on a intermittent basis throughtout t[illegible]ear.

B. Devices 1. Mechanical or electronic devices except slot machines that are played by any method either for amusement or with expectation of renumeration of either cash prize awards.

2. Mechanical or electronic devices except slot machines that dispense any type of merchandise for a set amount of money or tokens with a fixed value.

TITLE IV. - RULES OF OPERATION AND GENERAL APPLICABILITY

Section 401. Records, Returns and Audits. It shall be the responsibility of the Public Gaming Commissioner to promulgate regulations establishing proper accounting procedures and methods of operations for all licensees, so that all monies or things of value received and/or paid out may be properly monitored and accounted for. All licensees under this Code shall be required to keep an approved accounting system, which shall comply with, but not be limited to all applicable provisions of this Code or regulation of the Commissioner. Said accounting system shall reflect all business and financial transactions involved or connected in any manner with the operation and conducting of activities authorized by this Code.

Section 402. All bingo licensees shall charge players only for the bingo cards to be used in each game. The rate to be charged players for cards or packs shall be fixed by each licensee and posted conspicuously on the premises. Each person paying for the opportunity to participate in a bingo game shall be given an approved receipt for the bingo card or pack which shall be numbered and dated, which can be readily identified as belonging to that licensee. Each card or pack issued shall represent a specific amount of money which has been paid to the licensee. The amount of money represented by each card or pack issued shall be clearly made known to all players prior to anyone paying to participate in the activity.

Section 403. Any delay, maneuver or action of any kind, which in the opinion of the Commissioner, is effectuated by any licensee to unlawfully avoid paying the proceeds properly owing to the Muscogee Nation shall constitute grounds for taking any disciplinary action deemed necessary by the Commissioner, including but not limited to fining, revoking, suspending, limiting, or refusing to renew the license of any licensee.

Section 404. No applicant, licensee, or employee thereof shall neglect or refuse to produce records or evidence under their control, or to give information upon proper and lawful demand by the Commissioner, or shall otherwise interfere with any proper and lawful efforts by the Commissioner to produce such information. The Commissioner may summon any licensee or a licensee's agents, employees, or suppliers to appear to testify with regard to the conduct of any licensee or the agents, employees, or suppliers of any licensee. All such testimony shall be given under oath and may embrace any matters, which the Commissioner may deem relevant to the discharge of his official duties. Any person so summoned to appear shall have the right to be represented by counsel. Any testimony so taken may be used by the Commissioner as evidence in any proceeding or matter before the Commissioner or the Tribal District Court or, which may later come before the Commissioner or the Tribal District Court. Failure to so appear and testify fully at the time and place designated, unless excused, shall constitute grounds for revocation or suspension of any license held by the person summoned, his principal, or employee, or the loss of the privilege to further supply any person licensed under this Code.

Section 405. Licensees shall provide for their facility security, Provided, that contracts are reviewed, security plans, or amendments thereto are approved by the Commissioner prior to implementation.

Section 406. Unless prior written approval is obtained from the Commissioner, no person employed in the conduct of Public Gaming operating under one license shall be employed under any other license authorized to operate under this Code.

Section 407. Age Limit for Bingo. No person, who is under the age of eighteen (18), shall operate nor shall be allowed to participate in any manner in the operation of any bingo game. No person(s) under the age of sixteen (16) shall be allowed on premises where bingo games are being conducted. It shall be the responsibility of the licensee to enforce the provisions of this section.

Section 408. On duty operators shall not play. No operator shall allow a person who manages or receives any compensation, directly or indirectly, for the operation of any bingo games conducted by the operator to play in a bingo game while on duty. No operator shall allow any person who assists in the operation of any bingo game conducted by the operator to play in any bingo game conducted by the operator within 24 hours of the time said person did so assist.

Section 409. No free games for winners. No free cards or any opportunity to play in a bingo game shall be awarded or given to a person as prize for or conditioned upon winning a bingo game or games, Provided, that the Commissioner shall have the authority to grant exceptions upon request by the operators.

Section 410. No bingo game shall be conducted to include a prize determined other than by the matching of letters and/or numbers on a bingo card with letters and/or numbers called by the licensee or an employee of the licensee in competition with all players in the bingo game. All equipment used directly in the operation of a bingo game except bingo cards from which letters and/or numbers are obtained to call, balls or other items containing letters and/or numbers to call or used for the purpose of displaying numbers and/or letters called to the public, and any sound amplification system necessary for the convenience and comfort of the players and operators must be approved by the Commissioner.

Section 411. Every prize awarded during the operation authorized shall be awarded only to the person(s) actually winning the prize and displaying the proper admission ticket.

Section 412. Bingo cards or pack shall be sold and paid for only in advance for use in a specified game or specified numbered games. All sales of bingo cards or pack shall take place upon the premises. All bingo cards or packs must be used on the day sold.

Section 413. Promotional Activities and Renumeration. Certain licensees may be exempt from §409 and engage in promotions and activities that include prizes or the award of cards or packs as an incentive to allow certain individuals, who provide a specified service or meet other stated requirements, to participate in games the same as regular participants. Licensees participating in promotional activities must provide the Office of Public Gaming full details of all such activities and receive advance approval for each such promotional activities. Written approval for such activities must remain on file in the Office of Public Gaming and with the licensee for a period of not less than one (1) year.

Section 414. Each numbered ball or other device used in a bingo game for the selection of numbers to be called in play shall be the same weight and size as each of the other balls or devices used for that purpose of that game.

Section 415. In all cases the bingo operator must have and exercise complete control over that portion of the premises being used for bingo at all times said games are being played. The licensee or permit holder shall be held liable for any violation of this Code.

Section 416. Bingo games shall be operated and conducted only on the appropriate licensed premises authorized under this Code.

Section 417. No manufacturer, distributor, or operator shall by agreement either express or otherwise with any other manufacturer, distributor, or operator fix the price at which any device, paraphenalia, machine, equipment, prize or any other items used in connection with any of the activities authorized under this Code shall be sold or which services in connection therewith shall be rendered. The price of these items in a competitive market place shall be established by each manufacturer, distributor, or operator for the products and services offered by each and shall not be established, directly or indirectly, in concert with another.

Section 418. Licensees must own, supervise, and be directly responsible for all activities on their premises authorized by license under this Code, except as specifically outlined in Management Agreement approved by Ordinance.

Section 419. It is the policy of the Commissioner and the Muscogee Nation to require that all establishments, wherein bingo is conducted within the reservation, be operated in a manner suitable to protect the public health, safety, morals, good order, and general welfare of the inhabitants of the reservation. Responsibility for the employment and maintenance of suitable methods of operation rests with the licensee and willful and persistent use or toleration of unsuitable methods of operation will constitute grounds for license revocation or other disciplinary actions.

Section 420. Receipt required for income and prizes in bingo. All income from bingo games shall be receipted by the licensee at the time the income is received from each individual player, and all prizes shall be receipted for by the winner of each prize at the time the prize is distributed to each individual winner.

A. Income receipts forms. Income receipt forms shall be supplied by the licensee. They may be tickets or disposable bingo cards numbered consecutively, or they may be based upon a cash register system if an identification number is on the receipt given to the customer, which is one of a series of such numbers printed consecutively, and a corresponding number is recorded together with a record of the transaction being kept inside the cash register.

In the event a cash register system is used, the following information shall appear upon the receipt given a customer and upon the record being kept inside the machine; the name of the licensee operating the activity; the date the transaction took place, the receipt number; the amount of money paid, or a description of other consideration paid for the opportunity to play. The cash register receipt rolls retained in the machine showing those transactions shall be retained with the records of the licensee for a period not less than two (2) years.

(1) Receipts from income from all sales except those of opportunities to play bingo on disposable cards. Each person paying for the opportunity to participate in a bingo game, except as provided in sub-section (2), who does not receive a cash register receipt shall be given a ticket or tickets, which shall be consecutively serially numbered. Each ticket issued shall represent a specific amount of money which has been paid to the licensee. The amount of money represented by each ticket issued shall be clearly made known to all players prior to anyone paying to participate in the activity. Licensee shall record in his daily records the lowest numbered ticket issued as a receipt on each day or occasion and highest numbered ticket issued on this day or occasion. Tickets bearing numbers falling between these high and low

numbers issued, which were not issued as receipts on that day or occasion, shall be retained by the licensee as part of its daily records and shall not be otherwise be used or disposed of by the licensee for a period of not less than three (3) months or until such ticket has been duly inspected and accounted for by the Office of Public Gaming, at which time said receipts may be diposed of by the licensee.

(2) Receipt for income from sales of opportunties to play Bingo on disposable Bingo cards. As to each person playing for the opportunity to play bingo on disposable bingo cards, the disposable cards themselves may be used as the receipt required by this rule, Provided, that each set of disposable cards used is consecutively numbered from the first card to the last, and each card contains both it's individual consecutive serial number and the identification number assigned by the manufacturer to that set of disposable cards on its face, except for licensees specifically exempt by the Commissioner to minimize duplicate cards and avoid excess waste.

No disposable card in any game plays shall be a duplicate of any other card in that game. Each disposable card should represent a specific amount of money which has been paid to the licensee, which amount has been clearly disclosed to all players in advance of any player participating in the activity. Each disposable card shall be sold for the same price, as each other disposable card of the same class being used during any particular bingo game.

All licensees shall record in its daily records the set number of each set or portion of a set, which has been used during each bingo game on each occasion immediately following the playing of that game together with the serial number of the cards with the lowest and highest number of cards sold from each of those sets. The licensee shall retain, as a part of his daily records, each unsold disposable card with the serial number falling between the lowest and highest number sold from each set on that occasion and shall not otherwise use or dispose of those cards so retained for a period of not less than three (3) months or until such cards have been duly inspected and accounted for by the Office of Public Gaming, at which time said cards may be disposed of by the licensee.

E. Receipts for prizes. Receipts for prizes shall contain the following information. The name of the licensee operating the activity; the date the transaction took place; the receipt number and the game number; the true name and address of the winner of the prize; a description of the prize won and any value of that prize, which has been represented to the player by the licensee.

It shall be the responsibility of the licensee to see that the prize winners are properly and accurately identified upon the receipt for the prize, and the licensee shall require such proof of identification as is necessary to properly establish the winner's identity. The licensee shall not pay out any prize unless and until the winner has fully and accurately furnished to the licensee all information required by this rule to be upon the receipt for the prize. One duplicate of each prize receipt shall be given to the winner, and the other duplicate of prize receipts shall be retained by the licensee as part of its records for a period of not less than five (5) years.

Section 421. All establishments, wherein bingo operations are to be conducted, must be certified as s[illegible] by the Commissioner prior to the issuance of a license. All alterations or modifications must be approved by the Commissioner.

Section 422. Any premises licensed or any premises connected physically or otherwise with a licensed business, including vehicles used in connection therewith, shall at all times be open to inspection by the Commissioner. At any time during which a licensed gaming or related administrative activity is being conducted on a premises, the Commissioner or any authorized representative of the Commissioner may enter upon the premises without advance notice and:

A. Make an account of all monies on the premises and all monies received during the operation of the licensed activity located on the premises, inspect all receipts for prizes which have been awarded by the licensee;

B. Inspect any other records, accounts or other related information of the licensee, or of any member who directly participates in the management, operation, or promotion of a licensed activity; or of any employee of the licensee; or of any operator of the licensed activity;

C. Inspect, including the dismantling of all pieces of equipment or parts thereof or devices of any nature, which are being used to conduct the licensed activity.

D. When the Commissioner finds cause to believe that there is a reasonable probability that the provisions of this Code, including any amendments thereto or any of the rules passed by the Commissioner have been or are being violated by the licensee or its employees or operators, they may move to another location or locations for further inspection or investigation of any and all records and any and all equipment, part thereof, devices, or thing(s) of any nature located upon the premises related to the operation of the licensed activity or any other gambling activity. A receipt shall be issued to the licensee or operator of the activity which shall list and describe each record, that piece of equipment or part thereof, device, or thing(s) which has been removed from the premises. Each such record, piece of equipment, part thereof, or thing(s) so removed shall be returned to the premises or to the address of the licensee within ten (10) days, except Saturdays, Sundays, and days when tribal offices are legally closed. After its removal in as good condition as it was when it was removed unless the Commissioner determines that the record, equipment, devices, or thing(s) so removed are necessary for an ongoing investigation and/or evidence of possible violations of this Code or rules of the Commissioner by the licensee, by employers of the licensee or by operators of the licensed activity, or for possible forfeiture under Title II hereof with the Commissioner so notifying the licensee of the reasons said property or thing(s) are to be so held.

Section 423. No beverage containing alcohol, including but not limited to beer or liquor, shall be offered or awarded as a prize or in lieu of a prize for winning at any of the activities authorized by this Code, nor sold on the premises at any time.

Section 424. No firearms, air guns which are capable of discharging dangerous projectiles or gases, including but not limited to "B.B.'s" or CO_2 guns, rifles, shotguns, pistols, or revolvers shall be allowed on the premises, except as permitted by regulation of the Office of Public Gaming.

Section 425. No licensee or any of its members or employees, or any operator conducting or in any way participating in the conducting of any of the activities, which are authorized by this Code or by the Commissioner's rules, shall allow a person to play that activity on credit or shall grant a loan of any kind at any time to a person playing the activity.

Section 426. No person involved in the operation of any activity authorized by this Code or a rule of the Commissioner shall, directly or indirectly, in the course of such operation employ any device, scheme, or artifice to defraud; make any untrue statement of a fact, or omit to state a fact necessary in order to make a statement not misleading in consideration of the circumstances under which such statement was made; engage in any act, practice, or course of operation as would operate as a fraud of deceit upon any person.

Section 427. Each licensee shall obtain, maintain, and keep current a copy of the Bingo Code and all rules of the Commissioner and any amendments to either, which shall be located upon the premises used for the conduct of a licensed activity by a licensee during all times the activity is there conducted. The rules shall be produced by the licensee and shown to any person upon demand. The fact that the licensee may not have a current copy of each of the rules of the Commissioner shall not in any way diminish the licensee's obligation to abide these rules.

Section 428. No licensee shall conduct any activity authorized under this Code upon any premises, if the lease, license, contract, or any other agreement under which right to use said premises is not first fully disclosed to the Commissioner.

Section 429. No manufacturer or distributor shall make or have an agreement or understanding with any licensee that either of them shall be restricted in the operation and carrying on of business to a specific geographic area or areas, and such a restriction shall not be a condition of any sales between manufacturer, distributor and any other licensee, Provided, that this shall not prevent a distributor or manufacturer from assigning sales territories among its bona fide representatives.

Section 430. All licensees shall be responsible to insure that each manufacturer and each distributor selling or distributing equipment or other things used, directly or indirectly, in said licensee's gambling activities and who is not a Muscogee Nation resident or resident corporation shall designate a natural person, who is a resident living in the Muscogee Nation and who is eighteen (18) years of age or older, as a resident agent for the purpose of receipt and acceptance of service of process and other communications on behalf of the manufacturer distributor. The name and business address where service of process and delivery of mail can be made, and home address of such designated resident agent shall be filed with the Commissioner. All said manufacturers or distributors must be listed with the Commissioner.

Section 431. Immediately before the calling of each number in a bingo game, the caller shall turn the portion of the ball or other device used to determine which number is called, which shows the number and letter to the participants in the game, so that participants may know that the proper number is being called out.

Section 432. All licensees conducting games with a progressive payout feature will provide the Office of Public Gaming, for approval, the system for accumulation and account restrictions of funds so designated. The procedure and any amendments thereto must receive prior written approval of the Commissioner.

Section 433. All employees must be listed with the Commissioner. Such lists are to be kept current.

TITLE V. – PARA HORSE RACING

(RESERVED)

LE VI. – PARA DOG RACI

(RESERVED)

TITLE VII. - OTHER PUBLIC GAMING

(RESERVED)

TITLE IX. - REGULATION OF UNPERMITTED PUBLIC GAMING

Section 901. Policy; Construction. It is hereby declared to be the policy of the Muscogee Nation, recognizing the close relationship between professional gambling and other organized crime, to restrain all persons from seeking profit from gambling activities in this reservation; to restrain all person from patronizing such activities when conducted for the profit of any person; to safeguard the public against the evils induced by common gamblers and common gambling houses; and at the same time to preserve the freedom of the press; and to avoid restricting participation by individuals in sport and social pastimes which are not for profit, do not affect the public and do not breach the peace. All the provisions of this title shall be liberally construed to achieve these ends, and administered and enforced with a view to carrying out the above declaration of policy.

Section 902. Definitions. As used in this Code:

(1) "Gain" means the direct realization of winnings; "profit" means any other realized or unrealized benefit, direct or indirect, including without limitation benefits from proprietorship, management, or unequal advantage in a series of transactions.

(2) "Gambling" means risking any money, credit, deposit or other thing of value for gain contingent in whole or in part upon lot, chance or the operation of a gambling device, but does not include: bonafide contests of skill, speed, strength or endurance in which awards are made only to entrants or the owners of entries; bona fide business transactions which are valid under the law of contracts; and other acts or transactions now or hereafter expressly authorized by law.

(3) "Professional gambling" means accepting or offering to accept, for profit, money, credit, deposits or other things of value risked in gambling, or any claim thereon or interest therein. Without limiting the generality of this definition, the following shall be included: pool-selling and bookmaking; maintaining slot machines, one-ball machines or variants thereof, pinball machines which award anything other than an immediate and unrecorded right of replay, roulette wheels, dice tables, or money or merchandise pushcards, punch boards, jars or spindles, in any place accessible to the public; and conducting lotteries, gift enterprises, or policy or numbers games, or selling chances therein; and the following shall be presumed to be included: conducting any banking or percentage game played with cards, dice or counters, or accepting any fixed share of the stakes therein.

(4) "Gambling device" means any device or mechanism by the operation of which a right to money, credits, deposits or other things of value may be created, in return for a consideration, as the result of the operation of an element of chance; any device or mechanism which when operated for a consideration does not return the same value or thing of value for the same consideration upon each operation thereof; any device, mechanism, furniture, fixture, construction or installation designed primarily for use in connection with professional gambling; and any sub-assembly or essential part designed or intended for use in connection with any such device, mechanism, furniture, fixture, construction or installation. But in the application of this definition an immediate and unrecorded right of replay mechanically conferred on players of pinball machines and similar amusement devices shall be presumed to be without value.

[illegible]

"Gambling record" means any record, receipt, ticket, certificate, token, slip or notation given, made, used or intended to be used in connection with professional gambling.

"Gambling information" means a communication with respect to any wager made in the course of and any information intended to be used for professional gambling. In the application of this definition the following shall be presumed to be intended for use in professional gambling: information as to wagers, betting odds or change in betting odds.

"Gambling premise" means any building, room, enclosure, vehicle, vessel or other place whether open or enclosed, used or intended to be used for professional gambling. In the application of this definition, any place where a gambling device is found shall be presumed to be intended to be used for professional gambling.

(8) "Whoever" and "person" include natural persons, partnerships and associations of persons, and corporations; and any corporate officer, director or stockholder who authorizes, participates in, or knowingly accepts benefits from any violation of this act committed by his corporation.

(9) "Officer" means any deputy or designated agent of the Commissioner, the Tribal Lighthorse Administration, or Tribal District Court.

(10) "Court" means the District Court of the Muscogee (Creek) Nation.

Section 903. Gambling: Exemption: Professional Gambling.

(1) Whoever engages in gambling, solicits, or induces another to engage in gambling shall be fined by the Commissioner or prosectued under Federal Law.

(2) Natural persons shall be exempt from prosecution and punishment under subsection (1) for any game, wager or transaction which is incidental to a bona fide social relationship, is participated in by natural persons only, and in which no person is participating, directly or indirectly, in professional gambling.

(3) Whoever engages in professional gambling or knowingly causes, aids, abets, or conspires with another to engage in professional gambling shall be fined by the Commissioner or prosecuted under Federal Law.

Section 904. Gambling Devices; Gambling Records.

(1) All gambling devices are common nuisances and are subject to seizure immediately upon detection by any officer, who shall hold the same subject to confiscation and destruction by order of a court having jurisdiction.

(2) No property right in any gambling device shall exist or be recognized in any person, except the possessory right of officers enforcing this act.

(3) All furnishings, fixtures, equipment, and stock including without limitation furnishings and fixtures adaptable to non-gambling uses, and equipment and stock for printing, recording, computing, transporting, safekeeping, or [except as otherwise provided in subsection (3) of section 905] communication used in connection with professional gambling or mainta[illegible] a gambling premise, and all [illegible]y or other things of [illegible]ue at stake or displayed in or [illegible] connection with pro[illegible]ional gambling or any gambling dev[illegible] shall be

subject to seizure, immediately upon detection, by an officer, and shall, unless good cause is shown to the contrary by the owner, be forfeited to the tribe by order of a court having jurisdiction, for sale by public auction, or as otherwise provided by law. Bona fide liens against property so forfeited shall, on good cause shown by the lienor, be transferred from the property to the proceeds of the sale of the property. Forfeit monies and other proceeds realized from the enforcement of this subsection shall be paid equally into the general funds of the tribe and the general funds of the political subdivision or other public agency, if any, whose officers make the seizure except as otherwise provided by law.

(4) Whoever knowingly owns, manufactures, possesses, buys, sells, rents, leases, stores, repairs or transports any gambling device, or offers or solicits any interest therein; whether through an agent or employee or otherwise, shall be fined by the Commissioner or prosecuted under Federal Law. Subsection (2) of this section shall have application in the enforcement of this subsection.

(5) Whoever knowingly prints, makes, possesses, stores, or transports any gambling record, or buys, sells, offers or solicits any interest therein; whether through an agent or employee or otherwise, shall be fined by the Commissioner or prosecuted under federal law, and in the enforcement of this subsection direct possession of any gambling record shall be presumed to be knowing possession thereof.

Section 905. Gambling Information.

(1) Whoever knowingly transmits or receives gambling information by telephone, telegraph, radio, semaphore, or other means or knowingly installs or maintains equipment for the transmission or receipt of gambling information shall be fined by the Commissioner or prosecuted under Federal Law.

(2) When any public utility is notified in writing by a law enforcement agency acting within its jurisdiction that any service, facility or equipment furnished by it is being used or will be used to violate this section, it shall discontinue or refuse the furnishing of such service, facility or equipment, and no damages, penalty or forfeiture, civil or criminal, shall be found against any public utility for any act done in compliance with such notice. Unreasonable failure to comply with such notice shall be prima facie evidence of knowledge against such public utility. Nothing in this subsection shall be deemed to prejudice the right of any person affected thereby to secure an appropriate determination, as otherwise provided by law, that such service, facility or equipment should not be discontinued or removed, or should be restored.

(3) Facilities and equipment furnished by a public utility in the regular course of business, and which remain the property of such utlity while so furnished, shall not be seized pursuant to subsection (3) of Section 904 of this act, except in connection with an alleged violation of this act by such public utility, and shall be forefeited only upon conviction of such public utility therefore.

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Section 906. Gambling Premises.

(1) All gambling premises are common nuisances and shall be subject to abatement by injunction or as otherwise provided by Federal law. In any action brought under this subsection the plaintiff need not show damage and may, in the discretion of the court, be relieved of all requirements as to giving security.

(2) When any property or premise is determined by a court having jurisdiction to be a gambling premise, the owner shall have the right to terminate all interest of anyone holding the same under this.

(3) When any property or premise for which one or more licenses, permits, or certificates issued by this Tribe, or any political subdivisions, or other public agency thereof are in effect is determined by a court having jurisdiction to be a gambling premise; all such licenses, permits, and certificates shall be void, and no license, permit, or certificate so cancelled shall be reissued for such property or premise for a period of six (6) months thereafter. Enforcement of this subsection shall be the duty of all officers and all taxing or licensing officials of this Tribe and its political subdivisions and other agencies.

(4) Whoever as owner, lessee, agent, employee, operator, occupant, or otherwise knowingly maintains, or aids, or permits the maintaining of a gambling premise shall be fined or imprisoned, or both, and whoever does any act in violation of this paragraph within any locked, barricaded, or camouflaged place or in connection with any electrical or mechanical alarm or warning system or arrangement shall be prosecuted under Federal Law.

Section 907. Repeated Offenses.

Any person who has been convicted of a violation of Section 903(2), 904(4), 905(1), or 906(4) of this act may upon any subsequent violation of Section 903(2), 904(4), 905(1), or 906(4) be prosecuted as a repeating offender under Federal Law.

Section 908. Witness Immunity.

In any proceeding arising out of a violation of this act, if a natural person refuses to answer a question or produce evidence of any other kind on the ground that he may be incriminated under this act thereby, the court when requested in writing by the prosecuting attorney, shall, unless it finds that to do so would be clearly contrary to public interest, order such pers to answer or produce the evidence, and that person shall comply th the order. After complying with the order, and if, but for s section, he would have been privileged to withhold the ans given or the evidence produced by him, such person shall not prosecuted or subjected to penalty or forfeiture under this a for or on account of any transaction, matter or thing concernin which, in accordance with the order, he gave answer or produce evidence. He may nevertheless be prosecuted or subjected to penalty or forfeiture for any perjury or contempt committed in answering or failing to answer, in producing, or failing to produce, evidence in accordance with the order.

TITLE X. - NOTICE TO RESERVATION RESIDENTS

Section 1001. The Principal Chief shall publish 100 copies of this Code and shall make them available for sale to the public at cost.

Section 1002. The Principal Chief shall publish a Legal Notice in one newspaper of general circulation within each Legislative District of the Muscogee Nation. Said Notice shall read as follows:

> The Muscogee Nation has adopted a Code regulati public gaming within the Muscogee (Creek) Nation. All na l and legal persons who reside or do business within tribal boundaries are hereby notified that said Code is in ef ct.
>
> Effective , 198 , general ovisions ha been adopted, th tribal office of Commissi r of Public Gaming is establ d, and Notice to Rese ion Residents is required.

Certified Copy
Muscogee (Creek) National Council

NCA 85-7[illegible]

AN ORDINANCE OF THE MUSCOGEE (CREEK) NATION AMENDING NCA 84-04,
"REGULATING PUBLIC GAMING WITHIN THE MUSCOGEE (CREEK) NATION"

Section 100. Be it enacted by the Muscogee Nation in Council Assembled:

Section 101. FINDINGS. The National Council finds that:

A. The Office of Public Gaming has submitted amendments to NCA 84-04 to the National Council for legislative Action.

B. The amendments to NCA 84-04 have received a "DO PASS" recommendation from the Committee on Business and Governmental Services.

Section 102. The National Council hereby authorizes and approves the amendments to NCA 84-04 as recommended by the Committee on Business and Governmental Services.

Section 103. The National Council Secretary shall execute an original copy of NCA 84-04 to reflect the amendments as approved by the Committee on Business and Governmental Services; the Speaker and the Principal Chief shall sign the amended Ordinance.

Section 104. The amendments to NCA 84-04 shall become effective upon the signature of the Principal Chief of the Muscogee (Creek) Nation.

Certified Copy
Muscogee (Creek) National Council

Enacted by the Muscogee (Creek) National Council on this 23rd day of November, 1985.

IN WITNESS WHEREOF the Presiding Officer of the Muscogee (Creek) National Council has hereto attached his signature.

Carney Roberts
Carney Roberts, Speaker
National Council, Muscogee Nation

CERTIFICATION

I, the undersigned, certify that the foregoing is a true extract from the minutes of the Muscogee (Creek) National Council, comprised of seventeen members with thirteen members attending this meeting on the 23rd day of November, 1985, and that the above is in conformity with the provisions therein adopted by a vote of Seven in Favor, Six Against, No Abstentions, and that said Ordinance has not been rescinded or amended in any way and that the above is the signature of the Speaker of the Muscogee (Creek) National Council.

Certified Copy
Muscogee (Creek) National Council

Kay Willie
Kay Willie, Recording Secretary
National Council, Muscogee Nation

Effective , 198 , tribal licenses are required for public gaming activities, rules of operation and general applicability for public gaming are in force, a Public Gaming Transaction Tax is adopted, and unlicensed public gaming is prohibited.

One aspect of this Code is that any person subject to this Code who operates bingo games under state license shall also be required to obtain tribal licenses and to pay the Public Gaming Transaction Tax. Another aspect of this Code is that the Muscogee Nation has adopted the Model Anti-Gambling Act drafted by the National Conference of Commissioners on Uniform Laws.

APPROVAL

I, the Principal Chief of the Muscogee (Creek) Nation hereby affix my signature this 2 day of [illegible], 1985 to the above authorizing it to become an Ordinance under Article VI, Section VI of the Constitution of the Muscogee (Creek) Nation.

Copies of the Code are available for $ 12 .50 from the Office of the Principal Chief, P.O. Box 580, Okmulgee, Oklahoma, 74447.

/s/
Principal Chief
Muscogee (Creek) Nation
(date)

Claude A. Cox
Claude A. Cox, Principal Chief
Muscogee (Creek) Nation

Section 1003. The Principal Chief shall request in writing that the Bureau of Indian Affairs cause the Notice in Section 1002 to be published in the Federal Register. Failure of the Bureau to publish said Notice shall not be construed as limiting notice to reservation residents.

Section 1004. The Principal Chief shall notify the National Conference of Commissioners on Uniform Laws that the Muscogee Nation has adopted the Model Anti-Gambling Act.

ENACTED by the Muscogee (Creek) National Council on this 23rd day of November, 1985.

IN WITNESS WHEREOF, the Presiding Officer of the Muscogee (Creek) National Council has hereto attached his signature.

Garney Roberts
Garney Roberts, Speaker
Muscogee (Creek) National Council

Certified Copy

CERTIFICATION

I, the undersigned, certify that the foregoing is a true extract from the minutes of the Muscogee (Creek) National Council, comprised of seventeen members with thirteen members attending this meeting the 23rd day of November, 1985, and that the above is in conformity with the provisions therein adotped by a vote of Seven IN FAVOR, Six AGAINST, No ABSTENTIONS, and that said Ordinance has not been rescinded or amended in any way and that the above is the signature of the Speaker of the Muscogee (Creek) National Council.

Kay Willie
Kay Willie, Recording Secretary
Muscogee (Creek) National Council

Certified Copy

APPROVAL

I, the Principal Chief of the Muscogee [illegible] affix my signature this 2 day of Dec, 1985 [illegible] it to become an Ordinance under Article VI, Section [illegible] of the Muscogee (Creek) Nation.

[illegible] Principal Chief
Muscogee (Creek) Nation

ATTACHMENT # 2

MUSCOGEE (CREEK) NATION
VS
OKLAHOMA TAX COMMISSION
TULSA DISTRICT ATTORNEY

FEDERAL COURT DECISION
BY
DISTRICT JUDGE JAMES O. ELLISON

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

INDIAN COUNTRY, U.S.A., INC., a South Dakota Corporation, and THE MUSCOGEE (CREEK) NATION, a Federally Recognized Indian Tribe,

Plaintiffs,

vs. No. 85-C-643-E

THE STATE OF OKLAHOMA *ex rel.* the Oklahoma Tax Commission, and the District Attorney for Tulsa County,

Defendants.

and

THE STATE OF OKLAHOMA *ex rel.* DAVID MOSS, District Attorney,

Respondent
[Plaintiff],

vs. No. 85-C-658-E

THE MUSCOGEE (CREEK) NATION, a Federally Recognized Indian Tribe,

Petitioner
[Defendant].

MEMORANDUM OPINION AND ORDER

The court has before it for consideration an action for declaratory and injunctive relief against the State of Oklahoma *ex rel.* the Oklahoma Tax Commission, and the State of Oklahoma *ex rel.* the District Attorney for Tulsa County. Plaintiffs Indian Country U.S.A., Inc., and the Muscogee (Creek) Nation request this court with [illegible] declaring Oklahoma's [illegible] the bingo and games regulations inapplicable to the tribal bingo enterprise known as "Creek Nation Bingo" and enjoining the District Attorney, the Tax Commission, and the individual commissioners from enforcing those laws against the plaintiffs.

The issues were tried to the court from December 9 to December 13, 1985, and the court, after considering the testimony and exhibits presented and the briefs and arguments of the parties, announced its decision from the bench on December 20, 1985. The court now enters the following order in further support of that decision.

STATUS OF THE MUSCOGEE (CREEK) NATION

The Muscogee (Creek) Nation is a federally recognized Indian tribe currently operating under a new constitution adopted in 1979 and approved by the Bureau of Indian Affairs of the United States Department of Interior.[1]

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[1] The testimony of Rennard Strickland and Woodrow Haney laid the foundation for many of the historical facts underlying this section of the opinion. Dr. Strickland is presently Dean of the Southern Illinois University Law School and has formerly served as the acting Dean of the University of Tulsa School of Law and as the holder of an endowed Chair in the Combined Disciplines of Law and History at the University of Tulsa. Dr. Strickland is the author of many books and articles on the history of the Five Civilized Tribes and Editor-in-Chief of the 1982 revised edition of *Felix S. Cohen's Handbook of Federal Indian Law*. The 1982 revision of *Cohen* was mandated by an act of Congress and is widely recognized as the authoritative treatise on Indian Law.

(continued)

The government-to-government relationship between the Creeks and the federal government began with the Treaty of 1790,[2] was continued by the Treaty of 1866[3] and continues to the present.

During the 1820's the federal government adopted a policy of forcible removal of the Creeks from their homelands in the southeastern United States to what is presently the State of Oklahoma. Harjo v. Kleppe, 420 F. Supp. 1110, 1119 (D.D.C. 1976) (discussing the Indian Removal Act, Act of May 28, 1830, ch. 148, 4 Stat. 411, and Treaty with the Creeks, March 24, 1832, 7 Stat. 366). By the terms of the Removal Treaty of 1832, the Creeks gave up their eastern land holdings for new lands in Indian Territory. The federal government promised these new lands would be subject to the sovereign jurisdiction and control of the Creeks.

The political, cultural and economic institutions of the Creeks were rebuilt in Indian Territory. Because of their cultural and political sophistication, the Creeks and four other Indian tribes who had been removed to Oklahoma through the Removal Act of 1830, became known as the Five Civilized Tribes. Harjo, 420 F. Supp. at 1119. The Five Tribes owned all of the present State of Oklahoma except the panhandle region. Id.

During the American Civil War, some members of the Five Tribes became allied with the Confederacy. As a result of this involvement, the Creeks were forced to cede the western half of their lands to the federal government by the Treaty of 1866. By the terms of that treaty, the eastern half of the Creek lands were retained as a home for the Creek Nation[4] and continued to be known as the Indian Territory. 14 Stat. 785, 786, 788; Harjo, 420 F. Supp. at 1119. The Creeks agreed to such legislation as was deemed necessary by the federal government for the protection of the rights of persons and property within the Indian Territory, provided that such "legislation shall not in any manner interfere with or annul their present tribal organization, rights, laws, privileges, and customs." Article X, 14 Stat. 785, 788.

Although the treaty was "highly disadvantageous to the Creeks," the Creek Nation prospered during the last third of the nineteenth century. Harjo, 420 F. Supp. at 1120. In 1867 the Creeks adopted a constitution and code of laws for the "Muscogee Nation." Id. That constitution, patterned after American

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Mr. Haney speaks fluent Creek (a Muscogean tongue) and served for many years as an advisor to the Chiefs of the Creek Nation and as a member of the Creek National Council before the adoption of the new Creek Constitution in 1979. Mr. Haney is an internationally recognized artist, craftsman and lecturer on the history and customs of the Creek people.

For a more thorough review of Creek history, the court refers readers to the historical treatment afforded the Creeks by author Angie Debo in her many books, particularly And Still the Waters Run (1972), and The Creeks: The Road to Disappearance (1967). Both of these books were relied on by the court in Harjo v. Kleppe, 420 F. Supp. 1110 (D.D.C. 1976), aff'd sub nom., Harjo v. Andrews, 581 F.2d 949 (D.C. Cir. 1978). That court's comprehensive treatment of the history of the Creek Nation is adopted by this court.

[2] Treaty with the Creeks, August 7, 1790, 7 Stat. 35.

[3] Treaty with the Creeks, June 14, 1866, 14 Stat. 785.

[4] Article 9 of the treaty specifically refers to these retained lands as the "reduced Creek reservation." 14 Stat. 785, 788.

federalism, provided for executive, legislative and judicial branches of government. Legislative power was placed in a National Council, an elected bicameral body. During this period, in accord with ancient Indian custom, all land was held by the tribe communally. Members of the tribe could work as much of the land as they wanted; when the land ceased to be worked, it reverted to the Nation. *Id.*

Throughout this same period, however, large numbers of white settlers were illegally living in Indian Territory. Renewed efforts toward forced allotment of Indian lands reached a peak by the 1890's. Under increasing pressure from white settlers and proponents of allotment and assimilation, in 1887 Congress passed the Dawes Severalty Act, ch. 119, 24 Stat. 388. The Dawes Act provided for allotments of Indian reservations; the remaining unallotted lands were to be purchased by the federal government and made available for homesteading. *Harjo*, 420 F. Supp. at 1121-22.

Although the Five Civilized Tribes were exempt from the Act, in 1893 Congress created a commission, later known as the Dawes Commission, to negotiate with the Five Tribes. Act of March 3, 1893, ch. 209, 27 Stat. 612, 645-46. These negotiations concerned allotment of the Five Tribes' lands among their members and disposal of any lands remaining after allotment and addressed further adjustments necessary to the dissolution of these tribes. 27 Stat. 645. For the next two years, the Dawes Commission attempted to negotiate the dissolution of the Five Tribes. *Harjo*, 420 F. Supp. at 1122. It had minimal success; by

1895 the Five Tribes still refused to deal with the Commission. Consequently, Congress authorized the survey of all Indian land, and in 1896 directed the Commission to make a complete roll of the members of the Five Tribes. *Id.*

Additionally, bills were introduced in Congress calling for the forced abolition of tribal status. *Id.* Congress reacted by subjecting to presidential veto all laws passed by the National Council except resolutions of adjournment and acts relating to negotiations with the Dawes Commission. Act of June 7, 1897, ch. 3, 30 Stat. 62, 84. Succumbing to these pressures, the Five Tribes began to deal with the Commission. *Harjo*, 420 F. Supp. at 1122.

As a result of those dealings, by 1898 agreements were made by four of the tribes with the Commission; however, it appeared that three of the agreements, including the Creek agreement, would not be ratified by the tribal members. *Id.* Consequently, on June 28, 1898, Congress enacted the Curtis Act,[6] which provided for forced allotments and the eventual termination of the tribal tenure without the Indians' consent if the agreements were not ratified. The Creeks rejected their agreement with the Commission and the Act went into effect in their country. *Id.* The pressures applied by the federal government through the Act continued to escalate, however, and in 1901 the Creeks eventually consented to a new agreement that provided for the allotment of their lands to individual Creeks.[7] The agreement recognized that until such time as it was in fact dissolved, the Creek government would continue to function under the 1867 constitution as modified by the 1901 Act and prior agreements. Harjo, 420 F. Supp. at 1124.

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[6] Act of June 28, 1898, ch. 517, 30 Stat. 495.

When it became clear that the affairs of the Five Tribes could not be wound up by the date set for their final dissolution, the Congress, in early 1906, debated and enacted the Five Tribes Act. Act of April 26, 1906, ch. 1876, 34 Stat. 137. During the debate on the bill, Congress found it would be unable to complete legislative action before the date set for dissolution. Harjo, 420 F. Supp. at 1128. As a result, Congress passed a joint resolution that extended the life of the Five Tribes until the allotment process had been completed, or until otherwise provided by Congress. Shortly after this resolution, the Act became law. Section 28 of that Act superceded the joint resolution and provided "[t]hat the tribal existence and present tribal governments of the Choctaw, Chickasaw, Cherokee, Creek, and Seminole tribes or nations are ... continued in full force and effect for all purposes authorized by law ...." 34 Stat. 137, 148. By this provision, "Congress had declined to terminate the tribal existence or dissolve the tribal governments, despite all of its earlier intentions to do so." Harjo, 420 F. Supp. at 1129. See also Board of County Commissioners v. Seber, 318 U.S. 705, 718, 63 S. Ct. 920, 927 (1943) (holding that the Creek

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[7] Act of March 1, 1901, ch. 676, 31 Stat. 861.

Nation still exists and the guardianship relationship between the Creek Nation and the federal government continues until expressly terminated by Congress).

The tribal government of the Creek Nation was never disestablished. As stated by the court in Harjo:

> [D]espite the general intentions of the Congress of the late nineteenth and early twentieth centuries to ultimately terminate the tribal government of the Creeks, and despite an elaborate statutory scheme implementing numerous intermediate steps toward that end, the final dissolution of the Creek tribal government created by the Creek Constitution of 1867 was never statutorily accomplished, and indeed that government was instead explicitly perpetuated.

420 F. Supp. at 1118.

THE MACKEY SITE

This court must first determine whether the Mackey site,[8] the land upon which the tribal bingo enterprise is located, is Indian Country. Indian Country is defined in part to mean "all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation...." 18 U.S.C. § 1151(a). The State contends that the Mackey site is not Indian Country because it was land allotted to a freedman and is not a part of a reservation under the jurisdiction of the federal government.

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[8] The land is described as follows:

> Beginning at the NW corner of Lot 1 of Section 18, Township 18 North, Range 13 East; thence in a generally southeasterly direction with the so-called meander line forming the West boundary of Lots 1, 5 and 6 to its intersection with the section line between Sections 17 and 18; thence West to the thread of the stream of the Arkansas River; thence up said river with the thread of the stream to a point where it intersects the section line between Sections 18 and 7; thence East to point of beginning, containing 100 acres, more or less, Tulsa County, Oklahoma.

The Mackey site is a portion of the original land that was acquired by the tribe as partial compensation for the loss of tribal property east of the Mississippi River and for removal to the area now known as the State of Oklahoma. As previously discussed, by the Treaty of 1866, the Creek Nation ceded the western half of its domain to the United States. That treaty, however, expressly provided that the eastern half of the Creek lands was retained by the Creeks as a home for the Creek Nation. The Mackey site is a part of those retained lands.

The Treaty of 1866 was the last diminishment of the territorial boundaries of the lands of the Creek Nation; since that time no further treaties have been entered into between the federal government and the Creek Nation. See Harjo, 420 F. Supp. at 1120. Although there have been acts of Congress agreed to by the Creeks subsequent to 1866, none of these acts has diminished the Creek homelands.

In legal effect, the Mackey site has never been allotted. In 1925, title to the Mackey site was quieted in the Muscogee (Creek) Nation by final decree of the United States District Court for the Eastern District of Oklahoma. That court found that the Creek Nation acquired title to the subject tract of land as a part of its reservation by virtue of the Treaty of 1833, 14

Stat. 417, 419, as confirmed by patent from the United States dated August 11, 1852, and that title to the land is subject to sale or lease only for the benefit of the Creek Nation. The court further found the intervenor State of Oklahoma and defendant heirs and assigns of freedman Louisa Mackey had no right, title or interest in that land.

This court finds the Mackey site is Indian Country. Even though the lands of the Five Civilized Tribes were not always called reservations, whether lands are determined to be Indian Country does not turn on the label used in designating them. Cf. United States v. McGowan, 302 U.S. 535, 538, 58 S. Ct. 286, 287-89 (1938)(specifically concerned with "reservations" and "colonies"). Indian Country includes "any unceded lands owned or acquired by an Indian nation...." United States v. Chavez, 290 U.S. 357, 364, 54 S. Ct. 217, 220 (1933). To qualify as Indian Country, the land must be appropriated or set apart for the use of the Indians. See Minnesota v. Hitchcock, 185 U.S. 373, 390, 22 S. Ct. 650, 657 (1902). See also Treaty of 1833, Articles I and II, 14 Stat. 418, 419.

Diminishment of Indian lands must not be lightly inferred; a clear intent on the part of Congress to change the boundaries of the reservation must be present. Solem v. Bartlett, 465 U.S. 463, 470, 104 S. Ct. 1161, 1166 (1984); Rosebud Sioux Tribe v. Kneip, 430 U.S. 584, 586, 97 S. Ct. 1361, 1363 (1977). "Once a block of land is set aside for an Indian reservation ... no matter what happens to the title of individual plots within the area, the entire block retains its reservation status until

Congress explicitly indicates otherwise." Solem, 465 U.S. at 470, 104 S. Ct. at 1166.[9]

The Mackey site was a part of the original Creek estate derived by treaty and patent from the United States government. It remained a part of that estate after the Treaty of 1866. The Mackey site was not part of the Creek lands allotted to the tribe's members by the terms of the Five Tribes Act, 34 Stat. 137. The court recognizes that the Five Tribes Act contemplated the dissolution of the Creek Nation and specifically provided that lands held by the tribe at the time of dissolution would be held in trust by the United States government. Section 27, 34 Stat. 137., 148. Yet, the federal government has treated the Mackey site as trust property even though the tribe was never dissolved as contemplated by the Act. The Mackey site is the purest form of Indian Country; it is land set apart for the use and benefit of the Creek Nation. This trust land is Indian Country under § 1151(a).

CREEK NATION BINGO

In essence, the State contends that Creek Nation Bingo, the bingo enterprise it seeks to tax and regulate, is not a tribal enterprise but rather a business owned and operated by Indian

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[9] Whether there was ever an attempted allotment of the subject land is not significant, because the decree issued by the eastern district quieted title in the Creek Nation. That sixty-year-old decree is res judicata as to the Creek Nation's title to the land as against the State of Oklahoma.

Country U.S.A., Inc. This court disagrees with that contention.

This court finds Creek Nation Bingo is a tribal bingo enterprise owned, governed and controlled by the Muscogee (Creek) Nation. The tribal bingo enterprise was established by the Creek National Council and is controlled and supervised by the Muscogee (Creek) Public Gaming Commissioner. Muscogee Nation Public Gaming Ordinance, NCA-84-04 (March 9, 1984).

Indian Country U.S.A., Inc., is a South Dakota corporation which serves as the general partner of the limited partnership Indian Country, U.S.A., a Limited Partnership # 1. It operates Creek Nation Bingo under a management agreement approved by the National Council, Ordinance NCA-84-07 (March 15, 1984), the Principal Chief and the Bureau of Indian Affairs. Under the agreement, Indian Country U.S.A., Inc., is the agent of the Nation in the day-to-day operations of the bingo enterprise. The agreement also provides that the profits of the enterprise are to be distributed between the tribe and the management company. Even though Indian Country U.S.A., Inc., provided the start-up capital for the construction and development of the tribal bingo hall, under the agreement it is fully compensated for its management services and its venture capital investment.[10]

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[10] The agreement provides for the following distribution of net proceeds: (1) 40% to Indian Country, U.S.A., Inc., as its return on its capital investment; (2) of the remaining 60%, 40% to Indian Country, U.S.A., Inc., and 60% to the Creek Nation. The agreement further provides, however, that after Indian Country, U.S.A., Inc., recovers its capital investment, the Creek Nation is to receive 60% of the net profits and Indian Country, U.S.A., Inc., is to receive 40% of those profits.

The court further finds the Creek Nation, with the federal government acting as trustee on behalf of the tribe, owns all of the real property associated with the enterprise, including the Mackey site, and all improvements thereon.

STATE EXERCISE OF JURISDICTION

The State seeks to assert its authority over the activities taking place on the Creek Nation's land through the following two means: (1) it seeks to apply its sales and use tax laws against Creek Nation Bingo and Indian Country U.S.A., Inc.; and (2) it seeks to regulate the tribal bingo enterprise pursuant to the state's bingo laws. There have been innumerable decisions dealing with the relationship between Indian tribes and state governments. While no simple solutions emerge that resolve the validity of the particular state jurisdiction attempted here, this court finds the State may not apply its sales and use tax laws against the Creek Nation or its tribal enterprise, nor may it regulate the bingo activities taking place on Creek lands.

Although at one time this nation adopted a policy that left Indians free from state jurisdiction, see Rice v. Olson, 324 U.S. 786, 789, 65 S. Ct. 989, 991 (1945); Worchester v. Georgia, 31 U.S. (6 Pet.) 350 (1832), the Supreme Court no longer holds that state laws can have no force within Indian Country. However, while the Court has turned away from the exclusivity of tribal sovereignty, it still recognizes that Indian tribes retain "attributes of sovereignty over both their members and their

territory." White Mountain Apache Tribe v. Bracker, 448 U.S. 136, 142, 100 S. Ct. 2578, 2583 (1980). Discussing the principles to be applied in determining the permissible boundaries of state jurisdiction, the Court said:

> [T]here is no rigid rule by which to resolve the question whether a particular state law may be applied to an Indian reservation or to tribal members....
>
> Congress has broad power to regulate tribal affairs under the Indian Commerce Clause.... This congressional authority and the "semi-independent position" of Indian tribes have given rise to two independent but related barriers to the assertion of state regulatory authority over tribal reservations and members. First, the exercise of such authority may be pre-empted by federal law. ... Second, it may unlawfully infringe "on the right of reservation Indians to make their own laws and be ruled by them." ... The two barriers are independent because either, standing alone, can be a sufficient basis for holding state law inapplicable to activity undertaken on the reservation or by tribal members. They are related, however, in two important ways. The right of tribal self-government is ultimately dependent on and subject to the broad power of Congress. Even so, traditional notions of Indian self-government are so deeply engrained in our jurisprudence that they have provided an important "backdrop" ... against which vague or ambiguous federal enactments must always be measured.

Id. at 142-43, 100 S. Ct. at 2583 (citations omitted).

When the applicable treaties and federal statutes are read against this backdrop of Indian self-government and sovereignty, it is clear Oklahoma has exceeded its lawful authority. The State's exercise of jurisdiction is impermissible for the following reasons: (1) to the extent its sales tax laws operate to impose liability on the Creek Nation as a taxpayer, the State's authority is pre-empted by federal law; and (2) to the extent the State's tax and regulatory laws are directed against activities created, sold and consumed on tribal lands, the State's authority interferes with the tribe's ability to exercise its sovereign functions. Ramah Navajo School Bd., Inc. v. Bureau of Revenue of New Mexico, 458 U.S. 832, 837, 102 S. Ct. 3394, 3398 (1982).

A. Pre-Emption:

The answer to the question of whether federal law pre-empts the State's exercise of authority over the Creek Nation is not controlled by standards of pre-emption developed in other areas.

> Instead, the traditional notions of tribal sovereignty, and the recognition and encouragement of this sovereignty in congressional Acts promoting tribal independence and economic development, inform the pre-emption analysis that governs this inquiry.... Relevant federal statutes and treaties must be examined in light of "the broad policies that underlie them and the notions of sovereignty that have developed from historical traditions of tribal independence." ... As a result, ambiguities in federal law should be construed generously, and federal pre-emption is not limited to those situations where Congress has explicitly announced an intention to pre-empt state activity.

Ramah, 458 U.S. at 838, 102 S. Ct. at 3398-99. Thus, this court must examine the nature of the attempted state authority over the Creek Nation and the burden it places on the tribe, and determine

whether that authority has been pre-empted by federal law.

Through specific statutory provision, the incidence of Oklahoma's sales tax is on the consumer of the sale of tangible personal property and services. Oklahoma Sales Tax Code, Okla. Stat. tit. 68, § 1351 (1981).[11] However, other provisions of the Code clearly impose tax liability on persons other than the consumer.

The definitional section of the Code is set out in § 1352 (Supp. 1985). Subsection (O) defines a taxpayer as "any person liable to pay a tax imposed by this article." Subsection (Q) defines a tax remitter as: "any person required to collect, report, or remit the tax imposed by this article. A tax remitter who fails, for any reason, to collect, report, or remit said tax shall be considered a taxpayer for purposes of assessment, collection, and enforcement of the tax imposed by this article." Subsection (R) defines a vendor to mean:

> (1) Any person making sales of tangible personal property or services in this state, the gross receipts or gross proceeds from which are taxed by this article; or
>
> (2) Any person maintaining a place of business in this state and making sales of tangible personal property or services, whether at the place of business or elsewhere, to persons within this state, the gross receipts or gross proceeds from which are taxed by this article; ....

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[11] The court agrees with the State's assertion that bingo activities are taxable sales under the Code.

Maintaining a place of business is defined to include "having or maintaining in this state ... [a] physical place of business ... ." § 1352(G). The Code sets out specific obligations of vendors for collecting, reporting and remitting sales taxes and penalties for failure to execute those obligations. See tit. 68, §§ 1361, 1362 and 1365 (Supp. 1985). Further, § 1369 provides for the collection of delinquent taxes:

> (A) All taxes levied in this article which are delinquent together with any penalty and interest thereon may be collected in the same manner as any other taxes imposed by law in addition to any remedies or penalties set out in this article.
>
> (B) All delinquent taxes levied in this article or penalties or interest shall at all times constitute a lien upon the property of any person liable for the payment thereof, which shall be prior, superior and paramount as against the claims of unsecured creditors.

As previously determined, Creek Nation Bingo is a tribal enterprise of the Creek Nation, managed by its agent Indian Country, U.S.A., Inc. The Creek Nation retained and engaged Indian Country, U.S.A., Inc., to manage the day-to-day operations of the tribal bingo enterprise, but both share in the net profits of that enterprise.

That the Creek Nation is not physically involved in the day-to-day sales is not determinative of its potential tax liability under the Code.[12] It is involved through its agent-vendor,

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[12] Of course, this is not to say the Creek Nation is physically absent from the Creek Nation Bingo hall. Its Public Gaming Commissioner and his staff have the right at all times to complete overview of the bingo operations.

Indian Country, U.S.A., Inc.; it makes "sales of tangible personal property or services" through that agent. There is nothing in the Code that exempts a principal from the tax liability of its agent and there is no assurance that the State would not proceed against the Creek Nation to collect taxes, delinquent or otherwise, if the agent would not or could not satisfy that tax liability.

The State recognizes that it could not impose a sales tax on sales made to Indian members on Indian lands. See generally Bryan v. Itasca County, Minnesota, 426 U.S. 373, 376-77, 96 S. Ct. 2102, 2105 (1976). It argues, however, that the sales tax involved here is directed against sales to non-Indian purchasers; that the vendor simply collects the tax and passes it on to the State. Yet the Code makes clear that the vendor is a taxpayer and is personally liable for taxes due. Thus, while the Creek Nation is not the taxpayer when the sale is made, it is the taxpayer thereafter.[13]

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[13] Cf. Ramah, 458 U.S. at 844 & n. 8, 102 S. Ct. at 3401 & n. 8. In discussing the state's interest in imposing a gross receipts tax on a non-Indian construction company who contracted with a tribal organization to build a school on tribal lands, the Court said:

> The Bureau of Revenue invites us to adopt the "legal incidence" test, under which the legal incidence and not the actual burden of the tax would control the pre-emption inquiry. Of course, in some contexts, the fact that the legal incidence of the tax falls on a non-Indian is significant. See Washington v. Confederated Tribes of Colville Indian Reservation, 447 U.S. 134, 150-151, 100 S. Ct. 2069, 2079-2080, 65 L. Ed. 2d 10 (1980); Moe v. Salish & Kootenai Tribes, 425 U.S. 463, 96

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This case is distinguishable from the so-called cigarette sales tax cases for at least two reasons. First, unlike this case, the taxes in those cases were directed at the sale of items brought onto the Indian land and consumed off that land after purchase. Washington v. Confederated Tribes of the Colville Indian Reservation, 447 U.S. 134, 155, 100 S. Ct. 2069, 2082 (1980); Moe v. Salish & Kootenai Tribes of the Flathead Reservation, 425 U.S. 463, 96 S. Ct. 1634 (1976). Here the item purchased is produced, provided and consumed on land belonging to the Creek Nation. Second, and perhaps more significantly, nothing in those cases indicates the tribes were treated as taxpayers and subjected to tax liability as is the Creek Nation under the Oklahoma Code. Such status and tax liability is hardly comparable to the "minimal burdens" placed upon the Indian retailers in Moe, 425 U.S. at 483, 96 S. Ct. at 1646, and Washington, 447 U.S. at 151, 100 S. Ct. at 2080.[14]

> S. Ct. 1634, 48 L. Ed. 2d 96 (1976). However, in White Mountain, 448 U.S. at 151, 100 S. Ct. at 2587, we found it significant that the economic burden of the asserted taxes would ultimately fall on the Tribe, even though the legal incidence of the tax was on the non-Indian logging company. Given the comprehensive federal regulatory scheme at issue here, we decline to allow the State to impose additional burdens on the significant federal interest in fostering Indian-run educational institutions, even if those burdens are imposed indirectly through a tax on a non-Indian contractor for work done on the reservation.

[14] Another issue in Washington was whether the state could seize unstamped cigarettes as contraband if the tribes did not cooperate with the tax collection requirements. 447 U.S. at 161, 100 S. Ct. at 2085. In fact, cigarettes were seized before they reached the reservation. The Court found those seizures to be a (continued)

This court also finds the reasoning in McClanahan v. State Tax Commission of Arizona, 411 U.S. 164, 93 S. Ct. 1257 (1973), persuasive that the State cannot impose the liability sought against the Creek Nation absent the express consent of Congress. There the Court was principally concerned with an attempted imposition of state income tax on individual income earned wholly from reservation sources. In finding Arizona could not tax such income, the Court discussed several federal statutes which, when applied to the situation here, compel the conclusion that Oklahoma has acted beyond its jurisdiction. Id. at 176-79, 93 S. Ct. at 1264-66.

As is true of Arizona, Oklahoma was not one of the states that was originally delegated civil and criminal jurisdiction

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valid means for the state to enforce its tax provisions.

While it expressly declined to decide whether the state could have entered the reservation, seized the contraband and sold the cigarettes to pay the taxes due, Id. at 162, 100 S, Ct. at 2086, the Court said:

> It is significant that these seizures take place outside the reservation, in locations where state power over Indian affairs is considerably more expansive than it is within reservation boundaries. Cf. Mescalero Apache Tribe v. Jones, 411 U.S. 145, 93 S. Ct. 1267, 36 L. Ed. 2d 114 (1973). By seizing cigarettes en route to the reservation, the State polices against wholesale evasion of its own valid taxes without unnecessarily intruding on core tribal interests.

Id. at 162, 100 S. Ct. at 2085. The collection provisions of the Oklahoma Code are "considerably different" because "[a]ll delinquent taxes levied in this article or penalties or interest shall at all times constitute a lien upon the property of any person liable for payment thereof...." Okla. Stat. tit. 68, § 1369. Here, such property, real or personal, is located within Creek land.

over Indian Country through what is known as Public Law 83-280. Act of August 15, 1953, ch. 505, 67 Stat. 588 (18 U.S.C. § 162, 28 U.S.C. § 1360). The original Act, however, provided a means whereby other states could have assumed such jurisdiction without the consent of Congress. 67 Stat. 590. Oklahoma never asserted such jurisdiction. *State of Oklahoma ex rel. May v. Seneca-Cayuga Tribe of Oklahoma*, 56 O.B.J. 1554, 1557 (July 2, 1985). In 1968, however, Congress changed the procedure for the assertion of such jurisdiction by requiring both the consent of the tribes involved and the amendment of the state's constitution or statutes to reflect the assertion of jurisdiction. 25 U.S.C. §§ 1322(a), 1324. No state governmental act toward such assumption of jurisdiction has been identified here, nor has the Creek Nation consented to the exercise of such jurisdiction.

Nor does the State show where, under the theory of pre-existing jurisdiction, it has the authority to impose tax liability upon the Creek Nation or to put liens upon its property to satisfy its tax debt. The State argues that neither the Oklahoma Enabling Act[15] nor its constitution,[16] disclaimed the state's governmental interests in Indian lands or property located in what was known as Oklahoma and Indian Territory. It claims that the federal government retained undiminished, not exclusive jurisdiction over Indian property. Relying on *Organized Village of Kake v. Egan*, 369 U.S. 60, 82 S. Ct. 502 (1962), and *Draper v. United States*, 164 U.S. 240, 17 S. Ct. 107 (1896), the State concludes that had Congress intended to exempt the Indians from the general application of state civil and taxing law, it would have expressed that intent in the Enabling Act; that Congress did not express such an intent indicates a contrary intent.

The court agrees with the State's premise that the Enabling Act neither abolished state power entirely nor reserved exclusive federal jurisdiction. *Egan*, 369 U.S. at 70-75, 82 S. Ct. at 568-71 (Court specifically concerned with whether Alaska Statehood Act provided for exclusive federal jurisdiction over fishing rights of non-reservation Indians). This court disagrees, however, with the conclusion drawn by the State that from statehood Oklahoma has had the right to tax Indian tribes and Indian property. That conclusion is unsupported by *Egan*. The Court there also said:

> [E]ven on reservations state laws may be applied to Indians *unless such application would interfere with reservation self-government* or impair a right granted or reserved by federal law .... State authority over Indians is yet more extensive over activities ... not on any reservation ....
>
> ...[S]tate regulation of off-reservation fishing certainly does not impinge on *treaty-protected reservation self-government*, the factor found decisive in *Williams v. Lee*.

Id. at 75-76, 82 S. Ct. at 571 (emphasis added).

While Oklahoma may have retained governmental interests in Creek land and property, not every governmental interest it possesses as a sovereign can be asserted against the Creeks. Oklahoma is precluded from exercising those governmental interests that impinge upon the Creek's federally protected rights of tribal self-government. See McClanahan, 411 U.S. at 176 n. 15, 93 S. Ct. at 1264 n. 5. Cf. Currey v. Corporation Commission of Oklahoma, 617 P.2d 177, 180 (1979) (Oklahoma sovereignty over restricted Indian land is enlarged to the extent the federal government, through an act of Congress, withdrew from pre-emption in the field of oil and gas conservation).

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[15] Act of June 16, 1906, ch. 3335, 34 Stat. 267.

[16] Okla. Const. art. 1, § 3.

Similarly unavailing is the State's assertion that because Congress expressed no intention to withdraw Oklahoma's power to generally tax the tribe or tribal lands that, by omission or negative implication, Congress consented to such power. If such authority existed in 1906, then the later actions of Congress in authorizing certain state taxes become inexplicable. See e.g., Act of May 10, 1928, § 3, 45 Stat. 495, 496 (specifically authorizing state taxes "of every kind and character" for minerals produced on restricted allotted lands of the Five Civilized Tribes).[17] Cf. Buck Act, 4 U.S.C. § 109 (nothing in sections of Act authorizing sales, use and income tax in federal areas shall be construed to allow levy or collection of any tax on or from Indians not otherwise taxed). While none of these Acts can be seen as an affirmative tax exemption to the Creek Nation, it is obvious Congress would not have protected the immunity of Indians from state taxes had it thought the states had residual power to impose such taxes in any event. McClanahan, 411 U.S. at 177, 93 S. Ct. at 1265.[18]

Through numerous treaties and statutes, the Creek Nation has been solemnly promised the rights of self-determination and self-government. Certainly there have been historic attempts by the federal government to undermine those promises, but they nonetheless remain binding and have, in fact, been renewed. An integral attribute of self-government is the right to determine where tribal funds will go. See Harjo, 420 F. Supp. at 1142-43.

The power to tax is the power to destroy. If the State is permitted to treat the Creek Nation as a taxpayer, permitted to hold it liable for taxes due, delinquent taxes, penalties and interest, and permitted to put liens on Creek property until delinquencies are paid, then the State would be allowed an

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[17] Significantly, the 1979 Creek Constitution, approved by the United States Department of the Interior, contains the following provision:

> The political jurisdiction of the Muscogee (Creek) Nation shall be as it geographically appeared in 1900 which is based upon those Treaties entered into by the Muscogee (Creek) Nation and the United States of America; and such jurisdiction shall include, however not limited to, properties held in trust by the United States of America and to such other properties as held by the Muscogee (Creek)

(continued)

> Nation, such property, real and personal to be TAX-EXEMPT from Federal and State taxation, when not inconsistent with Federal law.

Creek Const. art. I, § 2 (1979) (emphasis in original).

[18] The Court's reasoning in McClanahan with respect to congressional consent to specific state taxes and the Buck Act is applicable to this case. The language in Oklahoma's Enabling Act is substantially the same as that found in the enabling acts of other states admitted to statehood after 1882, including Arizona. See Arizona v. San Carlos Apache Tribe of Arizona, 463 U.S. 545, 561 & n. 12, 103 S. Ct. 3201, 3210-11 & n. 12 (1983).

authority and power over the Creek Nation that flies in the face of the promises made to it. This court does not attribute any malevolent purpose to the State's actions. The fact remains, however, that the Creek Nation's sovereignty and self-government would be seriously eroded, if not destroyed, were the State permitted to impose this tax liability against it. This court finds such state authority is pre-empted by federal law.

B. Balancing of Interests Inquiry:

Not only is the State's authority to impose tax liability against the Creek Nation pre-empted by federal law, but its attempt to tax and regulate the tribal bingo activity is also invalid because the exercise of that state authority interferes with the Creek Nation's ability to exercise its sovereign functions. Ramah, 458 U.S. at 837, 102 S. Ct. at 3398; White Mountain, 448 U.S. at 142-43, 100 S. Ct. at 2583. Employing the balancing of interest inquiry set out in Washington, the court finds the State's interests in raising revenues, protecting its overall economy and regulating activities of its citizens are strong,[19] but under the circumstances, are outweighed by the

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[19] The court also recognizes the State's public policy interest in the possible infiltration of organized crime in business activities generally. The State, however, is not the only sovereign in this lawsuit who has a concern over organized crime: the Creek Nation also has a substantial interest in keeping its tribal bingo enterprise free from such criminal activity. In fact, the State has conceded that there is neither evidence nor even suspicion of organized criminal activity with respect to the tribal bingo enterprise.

interests of the Creek Nation and federal government. 447 U.S. at 156-57, 100 S. Ct. at 2083.

While there does not appear to be any definitive federal law that would pre-empt state regulation of bingo enterprises on Indian land, see Cabazon Band of Mission Indians v. County of Riverside, No. 84-6635 (9th Cir. Feb. 25, 1986) (available on WESTLAW, CTA9) (published opinion not yet available in slip opinion), it cannot be doubted that current federal policy is one aimed at fostering tribal self-government and economic development. Kerr-McGee Corp. v. Navajo Tribe, ____ U.S. ____, 105 S. Ct. 1900, 1904 (1985); New Mexico v. Mescalero Apache Tribe, 462 U.S. 324, 103 S. Ct. 2378 (1983). The statement by the President[20] regarding Indian policy evidences the substantial federal interest in fostering tribal self-determination and Indian control of Indian resources, and removing impediments to tribal economic development. A growing economy promotes self-sufficiency, decreases dependency upon public resources, and provides jobs and revenues for essential services. The implementation of this policy has involved the approval and endorsement of economic development through commonly used means, such as the use of private venture capital and management expertise. The Secretary of Interior, consistent with his fiduciary status, has assisted the Creeks and other tribes in their economic development efforts by developing guidelines for management contracts used in the operation of bingo enterprises.

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[20] Statement by the President: Indian Policy, the White House. 19 Weekly Comp. Pres. Doc. 98, 99 (Jan. 24, 1983).

This federal policy is also seen in numerous federal statutes designed "to rehabilitate the Indian's economic life and to give him a chance to develop the initiative destroyed by a century of oppression and paternalism." Mescalero Apache Tribe v. Jones, 411 U.S. 145, 152, 93 S. Ct. 1267, 1272 (1973) (referring to the purpose of the enactment of the Indian Reorganization Act of 1934, ch. 576, 48 Stat. 984). In 1936 Congress passed the Oklahoma Indian Welfare Act, 49 Stat. 167, which authorizes Indian tribes in Oklahoma to reorganize as constitutional governments. In 1975, the Indian Self-Determination and Educational Assistance Act, 25 U.S.C. §§ 450 et seq., was enacted to enable tribes to assume control of services and programs. Direct financial assistance for the promotion of economic development was provided by the Indian Financing Act of 1974, 25 U.S.C. §§ 1451 et seq.

The Creek Nation's interest in being free from state regulation and taxation is also strong. The tribal bingo enterprise generates valuable revenues used by the Creek Nation for an array of legitimate and pressing concerns. Revenues thus raised are used to enable the Creek Nation to be self-sufficient in its internal affairs and to address the needs of the tribe, including employment, health care, nutrition, housing and education. Ordinance No. NCA-84-30, Section 101. Moreover, Creek Nation Bingo has created jobs. A number of those jobs are held by members of the Creek tribe; many of those members were

unemployed prior to working for the tribal bingo enterprise. Even apart from the revenues flowing to the Creek Nation from the bingo enterprise, the payment of wages by the enterprise to those members is of tremendous benefit to the Creek Nation. The State's attempt to regulate the bingo enterprise and impose its sales tax Code on that enterprise would substantially reduce the revenues and economic benefits currently realized by the Creek Nation and impede its ability to carry out its legitimate and paramount concerns of self-sufficiency and economic development.

The scale is further tipped in favor of the Creek's interest in being free from the state taxing and regulatory scheme, because the thing of value being marketed here is created, sold and consumed on tribal land through tribal activities. This situation is quite different from the taxable activity in Washington. There the state's taxing interest outweighed the tribe's interest because the taxable product was imported onto the reservation for resale and consumed off the reservation. 447 U.S. at 156-57, 100 S. Ct. at 2083. Here the Creek Nation's interest in generating revenues for essential governmental programs is stronger than the State's interest because the revenues are derived from value generated on Creek lands by activities involving the tribe. See Cabazon, No. 84-5635.

This court finds that the interests of the tribe in its sovereignty, self-government and control over its own lands and activities outweigh the interests of the state enumerated here. Those state interests are further outweighed by the interests of the tribe and federal government in the economic self-sufficiency of the tribe and the vital purposes to which the revenues will be put.[21]

C. Use Tax

Indian lands are exempt from state taxation, as are permanent improvements upon such lands. Mescalero Apache Tribe v. Jones, 411 U.S. at 148, 93 S. Ct. at 1270. Consequently, the Creek Nation Bingo hall itself and the materials used to build the structure are exempt from use tax, as they are a permanent improvement and have become a part of exempt Indian land.

TAX INJUNCTION ACT

The court finds that the Tax Injunction Act, 28 U.S.C. § 1341, does not bar the Creek Nation's action to enjoin the collection of taxes. In Moe, the Court discussed § 1341 and 28 U.S.C. § 1362, which gives district courts "original jurisdiction over all civil actions, brought by any Indian tribe or band ... wherein the matter in controversy arises under the Constitution, laws, or treaties of the United States." The Court said that where the United States could have sued under § 1362 but the

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[21] Moreover, were this court to have found that the interests involved were evenly balanced, the court would be compelled to find in favor of the tribe. Ramah, 458 U.S. at 838, 102 S. Ct. at 3399.

tribe brought suit on its own, that in certain respects the tribe was to be accorded treatment similar to the United States. 425 U.S. at 475, 96 S. Ct. at 1642. The Court held that since the United States is not barred by § 1341 from seeking to enjoin enforcement of a state tax law, neither was the tribe.[22]

The exception provided by § 1362, however, is not available to plaintiff Indian Country U.S.A., Inc., which is not an Indian tribe as contemplated by the provisions of the Act. See Moe, 425 U.S. at 475 n. 14, 96 S. Ct. at 1642 n. 14. Thus, Indian Country U.S.A., Inc., may not maintain an action in this court to enjoin the collection of taxes and must be dismissed.

The court further finds, however, that the dismissal of Indian Country U.S.A., Inc., as a party does not affect the scope of relief that may be granted to the tribe to protect itself, its

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[22] The Eleventh Amendment does not bar this action by the Creek Nation even though the State has not consented to the suit.

> Congress, in the exercise of its enumerated powers, may strip a state of its Eleventh Amendment immunity.... Given the rationale used by the Court in Moe ... in construing 28 U.S.C. § 1362, we must conclude that Congress has removed the states' Eleventh Amendment immunity when a suit is brought by an Indian tribe. Aguilar v. Kleppe, 424 F. Supp. 433, 436 (D. Alaska 1976).

Confederated Tribes of Colville v. State of Washington, 446 F. Supp. 1339, 1350 (1978), aff'd as modified, 447 U.S. 134, 100 S. Ct. 2069 (1980)(issue of Eleventh Amendment not discussed on appeal). See also Oneida Indian Nation of New York v. State of New York, 691 F.2d 1070, 1079-1080 (2d Cir. 1982). But see Standing Rock Sioux Indian Tribe v. Dorgan, 505 F.2d 1135, 1139, 1140 (1974) (held Eleventh Amendment barred action by Indian tribe to collect money for taxes paid, but court specifically found United States had no interest in action so § 1362 could not raise tribe to the position of the United States).

tribal [illegible] enterprise and its agents from the actions of the state.

STATE NUISANCE ACTION

On July 9, 1985, a Petition for Injunction was filed in Tulsa County District Court, in which the plaintiff State of Oklahoma ex rel. David Moss, District Attorney, sought to permanently restrain and enjoin violations of the state bingo laws by defendants Muscogee (Creek) Nation and others at the Creek Nation Bingo hall. The action was brought pursuant to Okla. Stat. tit. 21, §§ 995.1 - 995.15 and 946 (Supp. 1983 and 1984), which declare violations of the state bingo laws and the facility in which such violations occur to be a public nuisance. The commission or maintenance of a public nuisance is a misdemeanor under Oklahoma law, Okla. Stat. tit. 21, § 1191 (1981), and may be enjoined by action of the state. Okla. Stat. tit. 50, §§ 1, 2, 5, 11 (1981).

Petition for removal to federal district court was filed July 15, 1985, as Case No. 85-C-658-E. Subsequently, plaintiff State moved to dismiss the petition for removal: more properly, to remand the action to state court.

The jurisdiction of a federal court is limited, and the court is to construe the removal statute strictly. Shamrock Oil & Gas Corp. v. Sheets, 313 U.S. 100, 108, 61 S. Ct. 868, 872 41). In a doubtful case, or when the right to removal is questionable, the court should decline jurisdiction and remand the case. Putterman v. Daveler, 169 F. Supp. 125, 130 (D. Del. 8).

"[A]ny civil action brought in a State court of which the district courts of the United States have original jurisdiction ..." may be removed. 28 U.S.C. § 1441(a). Section 1441(b) allows removal of such an action "founded on a claim or right arising under the Constitution, treaties or laws of the United States" without regard to the citizenship of the parties. A suit is said to "arise under" the laws of the United States if the required federal right or immunity is "an essential element of the plaintiff's cause of action ..." and the federal controversy is "disclosed upon the face of the complaint, unaided by the answer or by the petition for removal." Madsen v. Prudential Federal Savings & Loan Assoc., 635 F.2d 797, 800 (10th Cir. 1980) (citation omitted). A defendant's assertion of a defense, or right to a defense predicated on federal law is not enough by itself to confer federal jurisdiction. Id. at 800-801; State of Oklahoma ex rel. Grimes v. United Health & Retirement Assoc., 435 F. Supp. 550, 551 (W.D. Okla. 1977).

The removal action was based upon the bingo and nuisance laws of the State of Oklahoma. The federal questions which would be raised in the defense of that action do not form the basis of the petition to enjoin a nuisance under state law. The court finds that this is not an action of which the courts of the United States have original jurisdiction, and that it must, therefore, be remanded to the Tulsa County District Court.[23]

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[23] This court may enjoin ongoing state proceedings where necessary to protect and effectuate its judgments. 28 U.S.C. § (continued)

IT IS THEREFORE ORDERED that the motion of the State of Oklahoma ex rel. the District Attorney for Tulsa County to dismiss Indian Country U.S.A., Inc., be, and the same is hereby granted.

IT IS FURTHER ORDERED that the motion of the State of Oklahoma ex rel. David Moss, District Attorney to remand case number 85-C-658-E be, and the same is hereby granted.

IT IS FURTHER ORDERED that, the relief requested by the Plaintiff having been granted as set forth above, a permanent injunction[2283] shall issue.

So ordered this 24th day of April, 1986.

James O. Ellison
JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

[2283] The injunction runs against state court proceedings, not the litigants. Atlantic Coast Line Railroad Co. v. Brotherhood of Locomotive Engineers, 398 U.S. 281, 287-88, 90 S. Ct. 1739, 1743-44 (1970). In view of the orders and permanent injunction issued by this court in Case No. 85-C-643-E, however, the court sees no reason why it should enjoin, at this time, the remanded state court proceedings. This court has no reason to assume the state court will disregard this court's final orders or that the State or its agents and officials will violate the permanent injunction.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

INDIAN COUNTRY, U.S.A., INC., a South Dakota Corporation, and THE MUSCOGEE (CREEK) NATION, a Federally Recognized Indian Tribe,

Plaintiffs,

vs.

THE STATE OF OKLAHOMA ex rel. the Oklahoma Tax Commission, and the District Attorney for Tulsa County,

Defendants.

No. 85-C-643-E

and

THE STATE OF OKLAHOMA ex rel. DAVID MOSS, District Attorney,

Respondent
[Plaintiff],

vs.

THE MUSCOGEE (CREEK) NATION, a Federally Recognized Indian Tribe,

Petitioner
[Defendant].

No. 85-C-658-E

PERMANENT INJUNCTION

TO: DAVID MOSS, DISTRICT ATTORNEY FOR TULSA COUNTY, OKLAHOMA, AND EACH ASSISTANT DISTRICT ATTORNEY, AGENT, EMPLOYEE, SERVANT, OR OTHER REPRESENTATIVE OF THE DISTRICT ATTORNEY FOR TULSA COUNTY AND ALL PERSONS ACTING IN ACTIVE CONCERT WITH YOU OR UNDER YOUR CONTROL.

TO: THE OKLAHOMA TAX COMMISSION, COMMISSIONERS KILPATRICK, HANIE, AND WADLEY, AND EACH ATTORNEY, AGENT, EMPLOYEE, SERVANT OR OTHER REPRESENTATIVE OF THE OKLAHOMA TAX COMMISSION OR THE INDIVIDUAL COMMISSIONERS, AND ALL PERSONS ACTING IN ACTIVE CONCERT WITH YOU OR UNDER YOUR

On this 24th day of April, 1986, pursuant to the Memorandum Opinion and Order of this Court in the above-styled and numbered cause.

IT IS ORDERED that David Moss, District Attorney for Tulsa County, Oklahoma, and each Assistant District Attorney, agent, employee, servant, attorney or other representative of the district attorney for Tulsa County, and all persons acting in active concert with him or under his control be and hereby are permanently enjoined from the following:

1. Enforcing or attempting to enforce any criminal and/or civil prosecutorial authority against the Muscogee (Creek) Nation, the tribal bingo enterprise known as Creek Nation Bingo, and/or the entities, employees or other persons conducting, operating, managing or participating in the activities of the tribal bingo enterprise, including without limitation refraining from and refraining from attempting or threatening to:

   (a) arrest any persons for violation of the Oklahoma bingo laws, Okla..Stat. tit. 12, §§ 995.1 et seq. (1981 & Supp.), at any such game conducted by the Muscogee (Creek) Nation and/or the tribal bingo enterprise on the tribal property located at approximately 1616 East 81st Street, and described as follows:

   > Beginning at the NW corner of Lot 1 of Section 18, Township 18 North, Range 13 East; thence in a generally southeasterly direction with the so-called meander line forming the West boundary of Lots 1, 5 and 6 to its intersection with the section line between Sections 17 and 18; thence West to the thread of the stream of the Arkansas River; thence up said river with the thread of the stream to a point where it intersects the section line between Sections 18 and 7; thence East to point of beginning, containing 100 acres, more or less, Tulsa County, Oklahoma.

   (b) interfere in any way with the peaceable operation of such games;

   (c) padlock or otherwise attempt to close or impair the operations of the tribal bingo enterprise; and

   (d) confiscate, remove, seize or otherwise interfere with the property and receipts of the tribal bingo enterprise.

IT IS FURTHER ORDERED that the defendant State of Oklahoma ex rel. Oklahoma Tax Commission be and the same is hereby permanently enjoined from enforcing or attempting to enforce its regulatory and taxing authority against the Muscogee (Creek) Nation, the tribal bingo enterprise, and/or the entities, employees or other persons conducting, operating, managing or participating in the activities of the tribal bingo enterprise, by but not limited to the following means:

1. Entering onto the lands of the tribal bingo enterprise;

2. Auditing the books and records of the tribal bingo enterprise;

3. Confiscating, removing, seizing or otherwise interfering with the property and receipts of the tribal bingo enterprise; and

4. Seeking or procuring the civil or criminal prosecution of any person or entity managing, working for or participating in the activities of the tribal bingo enterprise of the Muscogee (Creek) Nation.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

PREPARED
STATEMENT OF RAYMOND L. BUTLER, JR. CHAIRMAN OF THE OTOE-MISSOURIA TRIBE OF OKLAHOMA

Mr. Chairman and members of the committee. My name is Raymond L. Butler, Jr., and I am Chairman of the Otoe-Missouria Tribe of Oklahoma. I want to thank you for the opportunity to speak on behalf of our tribe.

I am here today to express several concerns on S.902, H.R. 1920 and "Indian Gambling Authorization Regulation Act of 1986," all which reflect inconsistencies, infringement on tribal jurisdiction, and will prove to be a detriment to Indian gaming. Any legislation to regulate gaming will prevent tribes from carrying out tribal prerogatives and progressing.

The State of Oklahoma hasn't been able to assist Indian tribes with financial support, let alone, have the capabilities of regulating tribal activities and any state intervention will certainly impede the progress tribes have made over the past few years.

Speaking in general terms, Indian tribes, the states, and the federal government all share and have in common the same problems: (a) not enough funds to assist government responsibilities, (b) decrease in funds for human services, (c) decentralization of government services and, (d) new tax reform options to reduce the federal deficit and this affects everyone!

The Otoe-Missouria Tribe had an unemployment rate of 62% in 1981, today, because of gaming revenues, the tribe is making progress in all phases of development. The ultimate goal of the Tribe has been to alleviate "chronic poverty" and "chronic unemployment" for the Otoe-Missouria Tribe. These problems are being addressed. Federal agencies and programs have tried for thirty years to do the same thing but with no success.

Basic needs and services are being met, the tribe provides police protection, water services, and other services in a non-discriminatory manner for the Indian and non-Indian alike. Enterprise projects have been implemented providing jobs for everyone.

The local communities in our area, the businesses, services people, county governments, all receive benefits from the gaming activities and share in the revenue. Local trade and employment is up in the area. Material and supplies are purchased locally, the overall economy has improved.

Also, it should be brought to your attention that Indian tribes have the administrative capabilities to manage and account for their activities, whether they are fiscal or managerial.

In closing, the Otoe-Missouria Tribe of Oklahoma is opposed to any legislation that will advocate state jurisdiction, undermine tribal authorities and effect tribal economic development. I urge the Chairman and the Committee members to consider policy that will help the Indian people, not hold them down! Thank you.

Raymond L. Butler, Jr.
Chairman

PREPARED STATEMENT OF GAYLON FRANKLIN, SR.
SAC AND FOX TRIBE OF INDIANS OF OKLAHOMA

POSITION STATEMENT ON S902

In recent years the Sac and Fox Tribe of Oklahoma has enjoyed a prosperity unique in Indian Country by exercising those inherent powers common to governments, be they state or tribal governments. This prosperity has endured, in spite of federal cut-backs, due the Sac and Fox Tribe enacting laws governing activities such as mineral severance, sales, wages, corporations, and bingo. Through enactment of taxing laws the Sac and Fox Tribe has been able to fund certain essential governmental services such as, judicial systems, police and fire protection services, health and human services, water and sanitation maintenance and road improvements.

The Sac and Fox Tribe has been willing to share this prosperity with other local units of government in our area by providing sorely needed funds for road maintenance, expansion of police and fire protection, and equipment necessary for law enforcement agencies. This was made possible by using tax revenues generated by Sac and Fox laws and entering into cooperative agreements with local governments. It must be recognized that the Sac and Fox Tribe has reasonably acted as a sovereign tribal government to provide for the health and welfare of our common constituents.

Gaming in Indian Country has become such a vital source of income for Indian tribes that a realistic, objective scrutiny is a necessity. Expansion of tribal gaming operations since 1981, and the proposed increase in new operations have generated concern from local and state law enforcement agencies. The Sac and Fox Tribe of Oklahoma recognizes the need for regulation of gaming activities; in recognition of this need, the Tribe enacted a Bingo Ordinance on March 19, 1982. This ordinance provides for the licensing of all bingo games within the Tribe's jurisdiction, establishes requirements to obtain a license, defines reporting and procedural requirements and provides penalties for non-compliance.

We do not, therefore, object to the spirit of Senate Bill 902, i.e., regulation of Indian gaming, but do object to some of the methodology and provisions contained therein. Our specific objections are as follows:

The Bill states that a Tribal gaming ordinance adopted by an Indian tribal government shall be approved by the Secretary of the Interior or the Commission as provided by the Act. We feel that requiring the Secretary's approval infringes upon Tribal sovereignty and is inconsistent with the recent Supreme Court ruling on the case of Kerr-McGee Corporation vs. Navajo Tribe of Indians. In this case, the Court ruled that no federal approval was necessary when an Indian tribe regulates or taxes oil and gas leases. The Constitution and By-laws of the Sac and Fox Tribe of Indians of Oklahoma, for example, has no provision requiring Secretarial approval of ordinances.

We recommend that in defining the allowable uses of net revenues from Tribal gaming operations the specific language "for the purpose of funding essential governmental functions" be added to the Bill. (Section 6 (b) (2)).

We also object to the provision of the Bill (Section 6, Subsection (c)) that appears to place more stringent restrictions upon non-tribally operated gaming activities. We feel that this provision infringes upon tribes' right to self-government. As a government, we have chosen to regulate and tax the bingo operations within our jurisdiction. Through the Sac and Fox Bingo Ordinance of 1982 we regulate bingo operations even more stringently than the provisions of this Bill would require. For example, rather than requiring a financial statement, the Ordinance (Section 320) requires the furnishing of a $100,000.00 cash or surety bond. The Ordinance (Section 370) also requires the submission of information on all of the operation's staff, not just those with financial interest in or management responsibility for the operation. The Bill allows by management contract what we allow by Tribal statute; under our system, it is the licensee who assumes the financial risk. We have complete control of the licensed bingo operations within our jurisdiction. While we object to Secretarial approval of Tribal ordinances, we have no objection to requiring tribes to file such ordinances with the Secretary to insure adequate regulation. Please do not penalize us for our exercise of governmental authority. If this provision (Section 6, Subsection (c)) must be included, we request exemption from it. The system we have works; we invite your closest scrutiny.

Consistent with our earlier objection regarding the necessity of Secretarial approval of tribal gaming ordinances, we object to the Bill's provision (Section 7 (a)) requiring such approval of management contracts. The Solicitor's Opinion Memo of October 28, 1981, states that the trust responsibility almost always arises in connection with the Indian interests in real property. We would suggest, then, that the Secretary's involvement should start only when a lease is comtemplated for gaming purposes. At that time it would be appropriate for all available resources to be used to investigate the involved parties.

We also object to the proposed funding of an Indian Gaming Commission as provided by the Bill. (Section 11, Subsection (e)): through assessment of each Indian tribe maintaining gaming activities. The Federal Communication Commission regulates the public airways and the Federal Trade Commission regulates trade. Both are federally funded; we feel an Indian Gaming Commission should be so funded. We see an inherent conflict in the funding of a Commission by those organizations or activities that it purports to regulate

We do not support the regulation of Indian gaming by regional Commissions. We feel it would be more effective, both financially and operationally, to establish a National Indian Gaming Commission. We recommend that the composition of such a Commission be as follows:

One Tribal representative from each Bureau of Indian Affairs Area	(12)
One Presidential appointee	(01)
One appointee from each House of Congress - Senate and House of Representatives	(02)
One Justice Department appointee	(01)
One Bureau of Indian Affairs appointee, and	(01)
One Member-at-Large selected by the members of the Commission	(01)
For a total Commission membership of eighteen	(18)

We recommend that this Commission be given the following authority and responsibilities:

(1) Develop and implement national standards for Indian gaming
(2) Monitor compliance with those standards
(3) Investigate Indian gaming activities as necessary
(4) Conduct hearing on the local and national levels

(5) Report findings to Congress, the President and tribes
(6) Provide training and technical assistance in gaming activities to tribes.
(7) Authorize regional and/or state sub-commissions on gaming
(8) Authorize regional and/or state specific standards
(9) Hire staff as necessary for the fulfillment of these responsibilities

It is our estimation that initial funding for the establishment of such a Commission should be $1.5 million. We recommend a federal appropriation in that amount.

We also urge that the Bill include language specifying that the Court of competent jurisdiction in Indian gaming cases is Tribal Curt. The inclusion of such language is consistent with another recent Supreme Court decision. In the case of National Farmers Union Insurance Companies, et. al. vs. Crow Tribe of Indians, et. al., the Court's ruling upheld the Tribal Court's authority in the first instance to decide issues arising in Indian Country.

We also feel that the Bill should include language that would require the Justice Department to assist Tribes in the investigation of the backgrounds of existing or potential gaming operators. We suggest that such assistance be mandated, not withstanding the Privacy Act.

As noted previously, the Sac and Fox Tribe recognizes the need for regulation of Indian gaming. We hope that the legislation providing for such regulation will be consistend with Indian self-determination and tribal self-government. We believe that these recommendations we have made provide such consistency.

In summary, the Sac and Fox Tribe, acting as a government, has enacted stringent laws that govern certain activities within its own jurisdiction. These laws are successfully generating revenues for our tribal government and have not been successfully challenged. Sac and Fox laws are regulatory just as the laws of any city, state or municipality and should be given full faith and credit as such. We only ask that the Sac and Fox Tribe be allowed to continue to act as a government and not be subjected to legislation that contains overtones of socialism and political manuvering. If the Federal government assumes a necessity to regulate Indian gaming, then it should also bear a proportionate share of the burden. Imposing an undue gaming tax on Indian tribes is ludicrous and would be an abomination to the founding fathers of this great nation. We only ask respect for our government as a viable, successful entity that is concerned about our common constituents and our continued progress.

POSITION STATEMENT ON H.R. 1920

In recent years the Sac and Fox Tribe of Oklahoma has enjoyed a prosperity unique in Indian Country by exercising those inherent powers common to governments, be they state or tribal governments. This prosperity has endured, in spite of federal cut-backs, due the Sac and Fox Tribe enacting laws governing activities within their tribal jurisdictional boundaries. These laws tax and regulate certain activities such as mineral severance, sales, wages, corporations, and bingo. Through enactment of taxing laws the Sac and Fox Tribe has been able to fund certain essential governmental services such as, judicial systems, police and fire protection services, health and human services, water and sanitation maintenance and road improvements.

The Sac and Fox Tribe has been willing to share this prosperity with other local units of government in our area by providing sorely needed funds for road maintenance, expansion of police and fire protection, and equipment necessary for law enforcement agencies. This was made possible by using tax revenues generated by Sac and Fox laws and entering into cooperative agreements with local governments. It must be recognized that the Sac and Fox Tribe has reasonably acted as a sovereign tribal government to provide for the health and welfare of our common constituents.

For these reasons the Sac and Fox Tribe presents the following points regarding gaming in Indian Country.

IMPOSED LIMITATIONS by federal or stated law would severely limit the success of the Sac and Fox Tribe in providing services and would have a negative effect on our economic progress. Any limitation on the sovereign ability of tribal governments would be in contrast to the President's stated policy and would be contradictory to recent Supreme court decisions. Only obscure reasons exist for regulating gaming. Gaming as economic development and as an exercise of tribal sovereignty are inseparable and any limitation would infringe on the tribes' inherent right of self-government.

THE SAC AND FOX TRIBE SUPPORTS LEGISLATION OF GAMING IN INDIAN COUNTRY. Federal laws (Re: 19 - U.S.C., assimilated Crimes Act, Organized Crimes Act, Major Crimes Act and 25 CFR) and Tribal laws are now adequate and are methods of regulating that are no different than those of any gaming state. We emphasize that any legislation should protect existing tribal laws and should not approach the situation as lawlesness in nature. The real issue is of tribal laws vs. state laws as the lawful governing authority. We contend that the Sac and Fox laws governing gaming are substantial and should be recognized with full faith and credit as any other governmental law.

THE CONSTITUTION OF THE SAC AND FOX TRIBE DOES NOT REQUIRE SECRETARIAL APPROVAL. We feel that requiring Secretarial approval is inconsistent with recent Supreme Court decisions (Kerr McGee vs. Navajo Tribe) and would be an unfair limitation on our government.

FUNDING ESSENTIAL GOVERNMENTAL FUNCTIONS

We recommend that in defining the allowable uses of net revenues from Tribal gaming operations, the specific language "for the purpose of funding essential governmental functions" be added to the Bill. (Section 11(b)(1)-(2)(B).

TRIBE'S RIGHT AS GOVERNMENT

We also object to the provision of the Bill (Section 11, b (3) that appears to place more stringent restriction upon non-tribally operated gaming activities. We feel that this provision infringes upon tribes' right to self-government. As a government, we have chosen to regulate and tax the bingo operations within our jurisdiction. Through the Sac and Fox Bingo Ordinance of 1982 we regulate bingo operations even more stringently that the provisions of this Bill would require. For example, rather than requiring a financial statement, the Ordinance (Section 320) requires the furnishing of a $100,000.00 cash or surety bond. The Ordinance (Section 370) also requires the submission of information on all of the operation's staff, not just those with financial interest in or management responsibility for the operation. The Bill allows by management contract what we allow by Tribal statue; under our system, it is the licensee who assumes the financial risk. We have complete control of the licensed bingo operations within our jurisdiction. While we object to Secretarial approval of tribal ordinances, we have no objection to requiring tribes to file such ordinances with the Secretary to insure adequate regulation. Please do not penalize us for our exercise of the governmental authority. If this provision (Section 11, b (3) must be included, we request exemption from it. The system we have works,; we invite your closest scrutiny.

Consistent with our earlier objection regarding the necessity of Secretarial approval of tribal gaming ordinances, we object to the Bill's provision (Section 12 (a) requiring such approval of management contracts. The solicitor's Opinion Memo of October 28, 1981, states that the trust responsibility almost always arises in connection with the Indian interests in real property. We would suggest, that the Secretary's involvement should start only when a lease is contemplated for gaming purposes. At that time it would be appropriate for all available resources to be used to investigate the involved parties.

WE SUPPORT A NATIONAL GAMING COMMISSION TO REGULATE GAMING IN INDIAN COUNTRY and would recommend that the composition of such a commission be as follows:

One Tribal representative from each Bureau of Indian Affairs Area	(12)
One Presidential appointee	(01)
One appointee from each House of Congress - Senate and House of Representatives	(02)
One Justice Department appointee	(01)

One Bureau of Indian Affairs appointee, and	(01)
One Member-at-Large selected by the member of the Commission	(01)
For a total commission membership of eighteen	(18)

We would recommend that this Commission be given the following authority and responsibilities:

1). Develop and implement national standards for Indian gaming.

2). Monitor compliance with those standards.

3). Investigate Indian gaming activities as necessary.

4). Conduct hearings on the local and national levels.

5). Report findings to congress, the President and tribes.

6). Provide training and technical assistance in gaming activities tothe tribes.

7). Authorize regional and/or state sub-commissions on gaming.

8). Authorize regional and/or state specific standards.

9). Hire staff as necessary for the fulfillment of these responsibilities.

It is our estimation that initial funding for the establishment of such a Commission should be $1.5 million. We recommend a federal appropriation in that amount.

We also urge that the Bill include language specifying that the Court of competent jurisdiction in Indian gaming cases is Tribal Court. The inclusion of such language is consistent with another recent Supreme Court decision. In the case of National Farmers Union Insurance Companies, et. al. vs. Crow Tribe of Indians, et. al., the Court's ruling upheld the Tribal Court's authority in the first instance to decide issues arising in Indian Country.

We also feel that the Bill should include language that would require the Justice Department to assist Tribes in the investigation of the backgrounds of existing or potential gaming operators. We suggest that such assistance be mandated, not withstanding the Privacy Act.

As noted previously, the Sac and Fox Tribe recognizes the need for regulation of Indian gaming. We hope that the legislation providing for such regulation will be consistent with Indian self-determination and tribal self-government. We believe that these recommendations we have made provide such consistency.

We also recommend these amendments to H.R. - 1920 to reduce ambiguities and to focus on improvements that more readily address tribal issues.

AN ANALYSIS OF PERCENTAGES PROPOSED
BY CURRENT PENDING LEGISLATION

(Based on **Gross** Receipts of Private Bingo Operation licensed by
Sac and Fox Tribe of Indians of Oklahoma)

MONTH-YEAR	3%	5%
February 28, 1983	$ 970.89	$ 1,618.15
March 31	1,702.69	2,837.82
April 30	2,149.29	3,582.16
May 31	1,763.25	2,938.75
June 30	1,898.12	3,165.20
July 31	3,536.45	5,895.75
August 31	3,560.82	5,934.70
September 30	4,069.68	6,782.80
October 31	4,093.71	6,822.85
November 30	3,505.85	5,843.08
December 31	4,134.29	6,890.48
TOTALS	31,386.04	52,311.74
January 31, 1984	$ 4,052.05	$ 6,753.41
February 29	4,507.32	7,512.21
March 31	5,384.90	8,974.84
April 30	5,095.95	8,493.25
May 31	3,416.68	5,694.46
June 30	4,908.19	8,180.32
July 31	4,451.56	7,419.27
August 31	4,635.78	7,726.31
September 30	4,426.56	7,377.61
October 31	3,659.83	6,099.73
November 30	4,246.04	7,076.73
December 31	3,973.49	6,622.48
TOTALS	52,758.35	87,930.62
January 31, 1985	4,075.19	6,791.96
February	3,473.43	5,789.05
March	4,422.97	7,371.62
April	3,058.39	5,097.33
May	3,151.44	5,252.41
June	3,066.17	5,110.28
July	3,148.27	5,247.11
August	3,588.58	5,980.97
September	2,946.17	4,910.29
October	630.41	1,050.68
November 30	3,417.06	5,695.10
December 31	3,379.72	5,632.86
TOTALS	38,317.80	63,929.67
GRAND TOTAL	$122,462.19	$204,172.03

JAN [illegible]
[illegible] Indians of Oklahoma

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January 28, 1986

The Honorable Gaylon R. Franklin
Second Chief
Sac and Fox Tribe of Indians of Oklahoma
Route 2, Box 246
Stroud, Oklahoma 74079

Re: H. R. 1920

Dear Chief Franklin:

Pursuant to your recent letter of January 16 last, I have reviewed the marked up version of H.R. 1920 entitled **"Indian Gaming Regulatory Act."**

Although I am missing those pages subsequent to page 24, I have the following comments:

(1) Section 2(a)(2). The phrase "and which is conducted within a State which does not, as a matter of criminal law and public policy, prohibit such gaming activity" should either be deleted or clarified. In light of the Assimilative Crimes Act, this phrase is unnecessary. Also, if it is to be left in, it should clarify that Tribal regulation may vary from State regulation, at least as to Class II gaming.

(2) Section 2(a)(3) is simply wrong. Several Federal courts have held that 25 U.S.C. §81 requires the Secretary of the Interior to approve management contracts relating to Indian gaming — specifically Bingo. See for example, Wisconsin Winnebago Business Committee v. Kobertstein Nos., 84-1768, 84-1863 (7th Cir, May 29, 1985) 12 Indian Law Reporter 2109.

(3) Section 3(a). The last phrase "if such lands are located outside the boundaries of such Tribe's reservation" should be amended to read, "if such lands are not within or adjacent to the Tribe's last recognized reservation" in order to allow for those Tribes whose reservation boundaries may have been extinguished. Further, this section in the whole is unnecessary. The most that should be done is to require the secretary to give the State and municipal officials the opportunity to object to the acquisition prior to exercising his discretion as to whether to accept title to the property.

(4) Section 3(b) is overkill. Since the Secretary has discretion as to whether to accept the conveyance of property, 25 U.S.C. §§465, 501, the most that is necessary is to have the Secretary confer with appropriate State officials prior to exercising his discretion. The State should not be given veto authority over Tribal affairs.

(5) Under Section 5(a), is this Commission to be within the Bureau of Indian Affairs?

(6) The entire scheme of Sections 6 and 7 is difficult to rationalize. Why is the Chairman of the Commission granted sole authority over Bingo regulation, all management contracts for gaming, and the selection and supervision of the Commission staff? It could be said that the Commission itself is impotent with the only real power being vested in the Chairman — a Secretarial appointee. All of the Chairman's actions should be subject to the Commission's rules and regulations or the approval of the Commission. Otherwise, the Commission is nothing more than a paper tiger whose real function appears to be to take the heat for the actions of the Chairman.

(7) If Section 9 is intended to allow the Commission access to the criminal records, arrest records, and tax information of gaming managers and licensees, it should specifically say so.

(8) Section 11(a)(2)(B)(ii) should be clarified to indicate that it is the type of gaming activity which must be prohibited and not simply the regulatory scheme for controlling that gaming activity.

(9) Section 11(b)(2) and (3) are inconsistent with President Reagan's Indian Policy Statement and are illogical. Why require Tribes, under Section 11(b)(2)(A) to be the entrepreneurs and run the risk of loss of Tribal assets and failure of the enterprise, particularly when management agreements for a 40% fee are authorized. Likewise, Section 11(b)(3) makes no sense in that managers are allowed to receive a 40% fee, and no such prohibition applies to Class III gaming. As written, these provisions require the Tribe to operate as a business and prohibit the Tribe from acting solely in its capacity as a government — thus being contrary to President Reagan's Policy and the express policy of Congress to strengthen Tribal Governments. See the **Indian Reorganization Act**, 25 U.S.C. §§461, et seq., the **Oklahoma Indian Welfare Act**, 25 U.S.C. §§501 et seq., the **Indian Self-Determination Act**, 25 U.S.C. §§450 et seq. The Tribe should not be prohibited from licensing — as opposed to contracting with — outside entrepreneurs who wish to conduct Bingo and similar gaming activities. Governments everywhere are notorious for their general inability to successfully operate businesses. Those Tribes who choose to operate solely as a government should not be penalized or prohibited from doing so. The most that should be required is that the Tribe should be required to receive, through taxes, licenses, or other fees, at least 60% of the net revenues for the purposes expressed in Section 11(b)(2)(B).

(10) Section 11(b)(4) is too long. The 160-day period should be reduced to 60 to 90 days.

(11) Does Section 11(C)(2) mean that the Commission must have fifty different sets of regulations? Also, does the requirement that the regulations be identical to those of the State mean that the Tribe cannot levy and collect

a higher tax on those activities or be more restrictive than the State in its regulations? How is the Tribe going to adopt regulations concerning Class III gaming when the Commission must adopt regulations on the same subject? Again, it seems to me that these provisions are contrary to President Reagan's express policy and self-determination. The Commission's job should be to assist the development of Tribal regulations and the approval of them, not to dictate to the Tribes.

(12) Section 11(c) is appalling. The regulations of the Commission should only be enforceable in Federal or Tribal court. This scheme of this Section is simply a way to require Tribes to adopt the State law.

(13) Section 11(c)(4). To whom is the chairman to issue a license? The Tribe? The entrepreneur? The licenses should be issued by the Tribe to the business.

(14) Section 12(b) should have a provision added whereby the Tribe is precluded from waiving or infringing upon its power to tax.

(15) Section 12(d) should have a 60- or 90-day time period. Realistically speaking investment money cannot be held for four months in usual circumstances.

(16) Does Section 12(g) authorize the sale or mortgage of Indian trust land?

(17) Does Section 16(b) mean that the Tribes are to have criminal jurisdiction over non-Indian contractors, managers, and players?

(18) Section 17. If this is to be a Federal Commission having mandatory authority over the Indian Tribes, then the Federal government should pay for it. Requiring a minimum average contribution of $25,000.00 per year from the 80 Tribes having gaming operations to fund a Federal agency in light of the severe poverty conditions prevalent upon most reservations borders on the ludicrous. If the Tribes are to pay for this Commission at all, they should have control over all aspects of its organization, operations, and regulations.

(19) Section 19(3) should be changed to indicate the Indian Country as defined in 18 U.S.C. §1151.

Although H.R. 1920 contains several good provisions, it is my opinion that the bill would be severely detrimental to Indian gaming generally, would destroy the significant regulation of Bingo activities currently in place with the Sac and Fox Tribe, and all lawful means to prevent passage of the bill in its present form should be pursued.

The apparent presumptions behind the bill are that Indian Tribes are incapable of regulating gaming activities themselves, that Tribes should operate as businesses instead of as governments, that a secretarial appointee rather than an Indian or Indian Commission should be in charge of Indian gaming, and that the laws of the several States should dictate public policy within the Indian Country subject to Tribal jurisdiction rather than the Indian Tribe having governmental authority over that Indian Country. In short, these presumptions are an anathema to the express policy of The President and the Congress and the bill based on these invalid presumptions should be opposed.

Sincerely,

PIPESTEM & RICE

G William Rice

G. William Rice, Esq.

GWR:dag
cc: Chronological File
File No. 107.19

PREPARED STATEMENT OF FRANK WRIGHT

Mr. Chairman and members of the Committee, I am Frank Wright, the Chairman of the Puyallup Tribe. I thank you for the chance you have given me to testify on the bingo bills, H.R. 1920 and S. 902. Attached to this testimony is a Memorandum explaining in detail the background of Puyallup bingo.

Indian bingo issues matter to the Puyallups because the Tribe has licensed three individual members to operate bingo halls on the Reservation. The three halls are regulated and taxed by the Tribe, and produce by far the greatest source of revenue that the Tribe has today -- hundreds of thousands of dollars a year. It is hard to imagine how tribal operations could continue without that income. And because the halls are 100% Puyallup-owned -- no outside ownership or management whatsoever -- all the bingo money stays within the Tribe.

As a general matter we recognize the desirability of applying certain federal standards to Indian bingo games throughout the country. But our Puyallup bingo operations would be wiped out by S. 902 and by H.R. 1920, the Indian gaming bill enacted by the House. These bills would only authorize "Indian bingo" games owned entirely by the Tribe itself -- even though the Tribe might use an outside, non-Indian manager who may be paid up to 40% of net profits.

The bills provide that where a State does not prohibit gambling as a matter of public policy, a tribe may conduct bingo free from State regulation. The bingo operations must be in accordance with a tribal ordinance approved by a National Indian Gaming Commission, a body that the bills would establish. But significantly, the Commission may only approve tribal ordinances that provide (among other things) that "the Indian tribe itself shall have the sole proprietary interest and responsibility for conduct of the gaming activity." H.R. 1920, sec. 11(b)(2)(A). Otherwise the gambling operation will be completely subject to state regulation.

The system established in the bills is very different from the Puyallup approach to government. Our Tribe has always had a tradition of encouraging individual economic enterprise. The philosophy of our Tribe is to exercise its sovereignty through regulation and taxation of individual economic activity. This approach may make us different from many other tribes, but it has worked well for us and reflects our cultural values. It should not be dismantled.

I would like to give you a little of the historical background of the Puyallup Tribe, so that you will get a clearer sense of why we react as we do to the proposed legislation.

The Puyallups have a long entrepreneurial history. Business and trade are a kind of tribal tradition -- these activities are actually mentioned in our treaty, the Treaty of Medicine Creek. Historians have described how well-developed and sophisticated our "trading culture" was in the nineteenth century. Provided with adequate resources and our own initiative, we flourished.

But calamity came near the end of that century -- to us, and as this Committee knows, to so many other tribes. Non-Indian settlers eager for land and resources created tremendous pressure to open the Puyallup Reservation for sale. Thousands of acres were labeled "excess" and sold off. Even the acreage placed in trust for individual Indians soon slipped away -- through high-pressure tactics, distress sales, and fraud. Eventually all but about fifty acres of the 23,000-acre Reservation had vanished. The Puyallup people were reduced to truly desperate poverty, and to an existence with the highest mortality rate and lowest per capita income of any group -- except, of course, other tribes.

But Puyallups are extremely determined. Individual initiative has helped the Tribe back to its feet. In the recent past we have been fighting hard to regain land, and to get back to a point of economic self-sufficiency. One federal judge, Judge Gesell, was so impressed with the spirit of our Tribe that he specially mentioned the "heroic efforts of the Tribe, through its members, to improve itself," and described the Puyallups, who were parties to a case before him, as "self-respecting, and for that matter self-denying, people trying to preserve their tribe as a viable entity and to maintain themselves with a modicum of dignity and self-support." City of Tacoma v. Andrus, 457 F.Supp. 342, 346, 344-5 (D.D.C., 1978).

You can see this kind of spirit now in our bingo operations. Each of the three different halls has a distinctive character, but each one is successful, has a positive image in the surrounding community, and is the product of individual hard work and courage. These halls have helped stimulate the local economy. They have created jobs and a demand for support services. The money they pay the Tribe directly in taxes and fees is literally the only significant non-federal source of funding for tribal operations.

Our Tribe was the very first in the country to enact its own comprehensive gaming ordinance. The Tribal Council passed it in the fall of 1980, after individual members had become interested in the possibility of organizing bingo operations. The ordinance was drafted with the advice and assistance of the Department of Interior. Interior approved the ordinance as it was ultimately enacted.

This ordinance reflects our policy choice and indeed our political philosophy that the tribal government should govern -- regulate and tax -- while business should be carried on by private parties. We tax the gaming revenues at a rate of 17½% of gross revenues (after payouts), a fairly hefty rate. The Tribal Government can increase this tax rate if it should so decide, and it has in fact done so previously.

The games annually generate for the Tribal Government between five and six hundred thousand dollars in taxes and other fees. The tribal administration now depends on these taxes for its functioning. The bingo money is also frequently used to supplement ever-shrinking federal program funds. Please also recognize that the individual operators have invested significant sums in reliance on this scheme, which, after all, was approved by the Department of Interior.

Under our current ownership structure, three independently owned halls compete with each other to manage their operations most efficiently and to provide patrons with the most attractive combination of services. The competition among the halls gives their owners a real incentive to run the halls well. If the Tribe were compelled to run the bingo operations itself, as a single unit, the benefits of this competition would be lost.

I want to stress that the Puyallups system truly embodies individual enterpreneurship and free enterprise -- relying on individual incentive rather than government operation. This, we believe, closely follows how the United States itself manages its affairs. Our approach is truly a democratic one.

The Puyallups chose our approach in part because the Tribe did not wish to yield control of an important tribal enterprise to an outside, nontribal -- indeed, non-Indian -- management company. After all, why should such an organization have a long-term commitment to the Tribe and its goals? We think it is no accident that our tribally-owned and managed operations are considered wholesome games in the community. It is also important to us that all of the bingo revenues go to Puyallup tribal members, who support extended families. In our view this is preferable to having those profits absorbed by an outside management company. Further, the three halls together employ about 115 people, and more than half of these are Indian.

Another important factor in our choice was that the Tribe did not wish to take on the expense and risk associated with the financing and construction of a new business venture. Currently it is the individual owners, not the Tribe, that are at risk in the construction and operation of the games. Further, the amount of debt necessary to undertake a bingo operation would have shackled the Tribe for years to a bank or nonbank entity willing to put up the front money.

We know that many, many other tribes across the country are just as desperately in need of the revenues bingo can provide. We applaud the fact that H.R. 1920 and S. 902 preserve the benefits of Indian bingo for tribes, as a means to raise vitally needed revenues. We also know that for many other tribes, who are without any public or private source of capital investment within the tribe, the use of outside management groups is necessary. We think that the standards contained in these bills for regulating such relationships are generally desirable.

But we do not think the tribal-enterprise-with-management-contract structure should be forced upon us. The Puyallup Tribe has chosen an economic system based on individual enterprise, subject to regulation and taxation by the Tribe. This philosophy after all is similar to that of the federal government, and certainly of the current administration. We ask that our system receive similar respect.

Therefore, although we generally support H.R. 1920, we object to those provisions that would remove our right to license and tax individually owned games. If you do not wish to redraft the bill so as to provide generally for individually owned games, we ask that you include a provision to protect existing games owned by tribal members and regulated by the Tribe under an ordinance approved by the Department of Interior.

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Memorandum of Puyallup Nation of Indians and Individual Puyallup Bingo Operators Concerning H.R. 1920 and Related Bingo Bills

The Senate Select Committee on Indian Affairs how has before it H.R. 1920, a bill designed to regulate Indian gaming activities. The bill would require all bingo games on Indian lands to be owned solely by an Indian tribe, or else conform to state regulation, but permits the tribes to use outside, non-Indian management companies to operate tribally owned games.

The bill, inadvertently, we believe, would destroy the system currently used successfully by the Puyallup Nation in Tacoma, Washington and the large investments made by individual Puyallup Indians. Under that system, individual tribal members are licensed by the Tribe to own and operate bingo games on Indian lands under tribal regulation, and their revenues are then taxed by the Tribe to raise tribal revenues. This system provides full regulation of the games by the Tribe, and retains all of the profits among the Tribe and its members, with no funds flowing to outside, non-Indian interests. It is a model which has proven stable and successful for the Puyallups. We urge that the House bill be amended to preserve the benefits of the Puyallup system by "grandfathering" existing bingo games owned by tribal members and licensed by the Tribe.

1. The House bill effectively prohibits a tribe from licensing, regulating and taxing bingo enterprises owned by tribal members.

The gaming bill enacted by the House, H.R. 1920, provides that a tribe may conduct bingo free from state regulation if bingo is not prohibited in that State as a matter of state public policy. Sec. 11(a)(2)(B)(ii). Such gaming must be pursuant to an ordinance enacted by the tribe and approved by the National Indian Gaming Commission, an agency established by the bill. The Commission, in turn, may approve a tribal ordinance only if it provides, *inter alia*, that "the Indian tribe itself shall have the sole proprietary interest and responsibility for the conduct of the gaming activity." Sec. 11(b)(2)(A).

As the only exception to this, the tribe may provide for the licensing and regulation of bingo games owned by individuals -- either tribal members or not -- "except that the tribal licensing requirements shall be at least as restrictive as those established by State law governing similar gaming within the jurisdiction of the State within which such tribe is located." Sec. 11(b)(3). But state law, at least in the State of Washington, limits bingo to games conducted by "charitable or non-profit organizations" and limits games to "three occasions per week." WRS 9.46.020 (1985 Pocket Part). Since none of the Puyallup games could meet this test, H.R. 1920 as passed by the House would prohibit the successful model for operation of Indian bingo developed by the Puyallups.

2. The Puyallup Nation has established a successful system for licensing, regulating and taxing bingo games owned by tribal members.

In 1980, the Puyallup Nation enacted both a bingo ordinance and a gaming ordinance to license and regulate gaming on its reservation lands. The ordinance was drafted in close consultation with officials from the Bureau of Indian Affairs, and subsequently approved by the Secretary. It provides for licenses to be issued by the Tribe to tribal members who own and operate bingo games under tribal regulation.

In addition, the Tribe imposes a tax on the bingo games of 17½ percent of gross profits. This is in addition to an annual bingo license fee and a regular business license fee. The taxes and fees raise a significant amount of funds for the Tribe, almost $550,000 per year. This constitutes by far the major component of all monies which the Tribe receives from sources other than the federal government. The very ability of the Tribe to function as a government directly depends on its revenues from the bingo taxes and fees.

The approach taken by the Puyallup Nation in regard to bingo games is consistent with its approach in other areas. The Puyallup model is to license and tax individual enterprises without becoming involved in the actual sales or business operations. The Puyallups previously used this same approach with smokeshops that flourished during the 1970's. According to the tribal chairman, the philosophy of the tribal government is to tax and regulate -- i.e., to govern -- rather than to operate businesses itself. The Puyallup Nation, like the United States and most states, has chosen this system of regulation and taxation of private business, rather than the alternative of operating its own public business. It is a choice that should be respected.

The Puyallup model has encouraged individual enterprise and initiative among tribal members, and resulted in three highly successful bingo operations on the reservation. These games employ a total of 115 persons, over half of them Indian, and many of those tribal members. The individual owners -- not the Tribe -- are at risk in the construction and operation of the games. They are able to operate the games free of tribal politics. And the profits of the games not paid to the Tribe in the form of taxes are retained by the tribal members -- and their extended families -- who own and operate the games.

In part this choice was made because the Tribe did not wish to take on the expense and risk associated with the financing and construction of a new business venture. The amount of debt necessary to undertake a bingo operation would shackle the Tribe for years to a bank or non-bank entity that would put up the front money. And in part the Tribe did not wish to yield control of an important tribal enterprise to an outside, non-tribal -- indeed, non-Indian -- management company that might have little long-term commitment to the Tribe and its goals.

Further, the Tribe's regulation of these games has been successful. The Tribe's Gaming Control Board licenses and inspects the privately owned games and has, when necessary, mediated disputes between operators and patrons or employees. In one case, the Tribe closed down a gaming operation that was in violation of tribal regulation. Further, there has never been even a suggestion that the tribally regulated Puyallup games are anything other than completely honest. The total lack of corruption and absence of even the suspicion of any influence of organized crime is undoubtedly due, at least in part, to the fact that the owners and operators are tribal members who are committed to the welfare of the Tribe, not some outside influence there simply to manage a game and take away a percentage of the profits.

3. The legislation should preserve the Puyallup system of gaming regulation.

One of the stated purposes of the House bill is the goal of promoting "tribal economic development, tribal self-sufficiency, and strong tribal government." Sec. 2(a)(5). Yet by foreclosing the Puyallup Tribe from licensing tribal members to operate individually owned games and taxing the profits of those games, the bill sounds the death knell for one of the most successful instances of tribal self-government and economic self-sufficiency in the country.

The Puyallup system has important benefits:

- All profits of the bingo enterprises are retained within the Tribe and its members, rather than hundreds of thousands of dollars flowing off-reservation to non-Indian management companies.
- Individual enterprise and initiative among tribal members is encouraged and rewarded through a system of regulated private enterprise.
- The risk -- both financial and legal -- to the Tribe is minimized.
- The tribal government acts as a sovereign -- exercising powers of regulation and taxation -- rather than as a business operator, a role for which many tribal governments are ill suited.
- There is no outside influence from non-Indian management companies which, even if regulated, still pose the threat of acting as divisive outside interests that may not have the welfare of the Tribe as their primary goal.

Although the Puyallup model may not work for all tribes, it does work for the Puyallups. That Tribe should not be foreclosed from continuing a system of gaming which has proven successful, beneficial to the Tribe and its people, and free from the taint of corruption. The House bill grandfathers existing Class III "casino" type gambling. Surely the licensed bingo halls of the Puyallup Nation are equally worthy of preservation. Accordingly, the Tribe urges that any legislation enacted by Congress provide that existing bingo games owned by tribal members and regulated by the tribe be preserved. Attached to this memorandum are draft amendments to H.R. 1920 which would accomplish this result.

Alternative 1:
To grandfather existing individually owned games

Insert after Sec. 11(a)(4):

Within 60 days of the date of enactment of this Act, the Secretary shall prepare a list of each Class II gaming operation owned by a member or members of a federally recognized Indian tribe and actually operated on Indian lands as of January 1, 1986, and shall publish such list in the Federal Register. Such Class II gaming activities, if otherwise legal under existing law and so long as they remain within the same nature and scope, shall not be subject to the provisions of Sections 11(a)(2) through (4), but shall be lawful if licensed and regulated by the Indian tribe having jurisdiction over such lands pursuant to an ordinance approved by the Chairman. The Chairman shall approve any such ordinance if it meets the standards set forth in Section 11(a)(2)(C) through (E).

Alternative 2:
To provide for tribal licensing of individual operators.

Sec. 11.(a)(1) Class I gaming shall be within the exclusive jurisdiction of the Indian tribes and shall not be subject to the provisions of this Act.

(2)(A) Except as provided in subparagraph (B) and (C), Indian tribes may engage in, or license and regulate, Class II gaming activity on Indian lands if the governing body of the Indian tribe adopts an ordinance or resolution to that effect which is approved by the Commission pursuant to subsection (b) or (c) of this section. LIcenses are required for each place, facility or location of Class II gaming activities.

(B) Subparagraph (A) shall not apply with respect to an Indian tribe if --

(i) a gaming activity is specifically prohibited on Indian lands by federal law; or

(ii) such gaming activity is prohibited by the state within which such tribe is located as a matter of State public policy and criminal law.

(b)(1) An Indian tribe may engage in, or license and regulate, Class II gaming activity on the Indian lands of such tribe if the governing body of the tribe adopts an ordinance or resolution which is approved by the Chairman.

(2) The Chairman shall approve any tribal ordinance or resolution concerning the conduct, licensing, or regulation of Class II gaming activity on the Indian lands of such tribe if such ordinance or resolution provides that --

(A) except as provided in paragraph (3), the Indian tribe itself, or a tribal member licensed by the tribe, shall have the sole proprietary interest and responsibility for the conduct of any gaming activity;

(B) net revenues if conducted by a tribe, or tribal tax revenues if conducted by an individual tribal member, from any gaming activity are not to be used for purposes other than --

(i) to fund tribal government operations or programs;

(ii) to provide for the general welfare of the Indian tribe and its members;

(iii) to promote tribal economic development;

(iv) to donate to charitable organizations; or

(v) to help fund operations of local government agencies:

Provided, That, if such net revenues are directly or indirectly used for per capita payments to tribal members, those payments are subject to Federal tax.

* * *

(3) A tribal ordinance or resolution may provide for the licensing or regulation of Class II gaming activities owned by individuals who are not members of the tribe or entities other than the Indian tribe, except that the tribal licensing requirements shall be at least as restrictive as those established by State law governing similar gaming within the

jurisdiction of the State within which such tribe is located. No individual who is not a member of the tribe, or entity other than the tribe, shall be eligible to receive a tribal license to own a Class II gaming activity within the tribe's jurisdiction if such individual or entity would not be eligible to receive a State license to conduct the same activity within the jurisdiction of the State.

PREPARED STATEMENT OF MACKENZIE TURNIPSEED

Members of the Select Committee, thank you for your time. My name is Mackenzie Turnipseed. I am a member of the Puyallup Tribe and the manager of B.J.'s Bingo Hall, the first bingo hall to be licensed by the Puyallup Tribe. B.J.'s was started by my mother, Bertha Turnipseed, five years ago. Today my mother, my sister and I jointly own the hall. It's been a great success and we are proud of it.

We are greatly concerned by the approach of the various bills before the Committee which require that all Indian bingo games be owned by an Indian tribal Government in order to benefit from the protections of the law. Although tribal ownership works for many tribes, the Puyallup system also works at least as well. Under that system the Tribe licenses and regulates tribal members who own and operate bingo games on the Reservation. There are many reasons for the success of the Puyallup system, and we ask that it be preserved by grandfathering this system in any of the legislation which you are considering.

To me the success of the Puyallup bingo system illustrates the positive results of the Puyallup Tribe's approach to bingo. The Tribe enacted a bingo ordinance in the fall of 1980, with the assistance and approval of the Department of Interior. The ordinance established a system through which the Tribe may license individual members to own and operate bingo games on the Reservation. The Tribe regulates the games in detail and taxes their revenues at a rate of 17½% of gross. A total of three Puyallup bingo halls have been licensed under this scheme.

Because the bingo bills now before you would not extend their benefits to individually owned Indian bingo halls, they would destroy the Puyallup bingo system. It is operating well and deserves to survive.

Our bingo halls are a terrific source of tax revenues. They bring the Tribe hundreds of thousands of dollars a year. It's virtually the only thing keeping the Tribe from total dependence on federal funds -- a very dangerous position in the era of Gramm-Rudman.

It seems to me that the two stated concerns about Indian bingo have been, one, a fear of corruption by organized crime in the games; and two, an objection to outsiders and non-Indians "cashing in" on a tribe's sovereign status. The Puyallup bingo system completely avoids both of these problems. First, the bingo halls are not going to be corrupted because every single person involved in their ownership and management is a member of the Puyallup Tribe, not an outsider. That means the bingo halls are located in our own communities. We grew up here and intend to stay here. Our children and our parents are here. This is the same land our ancestors lived on. We are simply not inclined to operate sleazy games, cash in and get out of town.

As for the other big concern, the objection to "Indian bingo" profits going to non-Indians, that will not happen either with the Puyallup games. Every penny of bingo money stays within the Tribe. First, there is the very substantial tax we pay to the Tribe: 17½% of gross revenues, not net. We pay annual license fees as well. And of course since the bingo hall owners are all tribal members, the rest of the revenues, after taxes and other expenses, stay within the Tribe.

In addition, the Puyallup bingo ordinance requires the halls to maintain an Indian employment preference policy. Together the three halls provide jobs for about sixty Indians. That is more than half of their total employees. It is not unlikely that many of those sixty Indians would otherwise be unemployed.

Now compare this with the typical situation where the tribe owns a bingo game and hires an outside manager to operate it, the system which H.R. 1920 and S. 902 would protect. The contract manager would likely be a non-Indian, and typically from outside the local community. It is very possible that the tribe would contract with a huge, for-profit, non-Indian company. Obviously managers like these have no real stake in the integrity or even the long-term success of the games. Why should non-Indian management groups profit, but individual tribal members not be able to do the same?

Also, notice that under these bills the outside manager might get as much as 40% of net revenues. The tribe would retain 60% of net. A tribe would not necessarily do better under this scheme than the Puyallup Tribe does in receiving 17½% of gross. In addition, under the management contract scheme, the tribe has to assume much more risk than with our method. Further, the costs to the Tribe would be higher. If the Tribe itself had to construct bingo halls to replace the current ones owned by myself and other tribal members, it would have to borrow millions of dollars to finance that effort. The interest costs alone on this debt would be a significant expense which the Tribe does not now bear.

I want to emphasize again that the Puyallup bingo ordinance was drafted in close coordination with the Department of Interior, and was approved by the Department of Interior.

Since then a great deal of money has been invested by us individual operators, relying on that ordinance.

The Puyallup Tribe's bingo ordinance itself is very detailed -- over 30 pages long. It regulates every part of our operations from recordkeeping to hiring practices to the type of bingo equipment to be used. It contains provisions for fines and for inspections by the Tribe's Gaming Control Board.

I have personal knowledge that this regulatory system is effective. I don't know about the other operators, but in its early days B.J.'s had to pay a fine one time over some minor violation. And I know of another case where the Board closed down a gaming operator who violated the Tribe's regulations. The Board has also acted as a mediator between the operators and employees or patrons, on the rare occasions when that was needed.

I urge all of you to come visit the Puyallup bingo halls and see for yourself what a positive contribution they make to the community. All three halls are clean, well-run, and completely free of crime or what people sometimes refer to as "unsavory elements." There has never been the slightest hint of mob influence.

Our bingo system reflects the Tribe's political decisionmaking and preferences. Puyallups have always been achievers, individualists, and businessmen. Our Tribe has generally taken the approach that business should be left to private entrepreneurs, not run as a "public" enterprise. Why? For the same reasons that so many other groups in America have made this choice. Individuals simply do better at running a business than government does. They are free from politics and pressure and can concentrate on efficiency.

Let me close by summarizing what I see as the key advantages of the Puyallup bingo scheme.

1) Individual enterprise and initiative among tribal members is encouraged and rewarded through a system of regulated private enterprise.

2) The risk to the Tribe, both financial and legal, is minimized.

3) The tribal government acts as a sovereign -- exercising powers of regulation and taxation -- rather than as a business operator, a role for which many tribal governments are ill-suited.

4) There is no outside influence from non-Indian management companies which, even if regulated, still pose the threat of acting as divisive outside interests that may not have the welfare of the Tribe as their primary goal.

5) All profits of the bingo enterprises are retained within the Tribe and its members, rather than hundreds of thousands of dollars flowing off-reservation to non-Indian management companies.

Finally, I would like to remind the Committee that the current administration's Indian Policy Statement expressed strong support for tribal self-government, but stressed that tribes should become more economically self-sufficient. It encouraged "private sector involvement" and "innovative approaches." The House bingo bill has similar goals. Its stated purposes include the promotion of "tribal economic development, tribal self-sufficiency, and strong tribal government." Sec. 2(a)(5).

The Puyallup bingo games achieve all these goals so well. I urge you to let them continue by preserving the current system for Puyallup bingo.

Prepared statement of Leon Campbell, chairman, Iowa Tribe of Kansas and Nebraska

Presently there are three bills pending before the Senate. H.R. 1920, S. 902 and a bill proposed by the Reagan Administration. The Iowa Tribe of Kansas and Nebraska is opposed to the Administration bill. The Iowa Tribe of Kansas and Nebraska does, however, believe that H.R. 1920 and S. 902 represent the kind of federal legislation that nationally addresses the concerns raised.

The Iowa Tribe of Kansas and Nebraska has operated a Bingo Enterprise for four years. As the attached fact sheet shows, it has grown into a very successful operation. The facts speak for themselves. The Iowa Tribe has significantly reduced unemployment, supplemented Tribal programs and diversified economic development enterprises in the process. Of course, we are proud of this success and look upon it as a beginning of true self sufficiency and independence after too many years of dependence on the federal government. Since our bingo enterprise is such a valuable source of revenue, we have worked hard to protect it and to keep it an entertaining and honest game for our patrons.

The Iowa Tribe of Kansas and Nebraska has closely monitored developments within the federal government which would change or effect its operation since 1982 when the United States Department of Justice first attempted to have regulatory jurisdiction over this activity granted to the states. That attempt was stopped by former Secretary of Interior, James Watt, who rightfully believed that federally recognized tribes engaged in such gaming activities should be consulted prior to the enactment of any legislation that would adversely effect their governing authority. While Secretary Watt has been criticized for many reasons, Indians considered his action a proper act of the Trustee protecting the governing authority of Indian Tribes from unwarranted interferences from any source. This, however, did not end the matter but rather extended it to the point where we now find it today.

The National Indian Gaming Task Force was an ad hoc association of more than 60 federally recognized Tribes that were engaged in the conduct of gaming on their reservations. The overwhelming majority of these operations are bingo enterprises. Some of the operations are managed by consulting firms by contract with Tribes. Others, such as the Iowa Tribe of Kansas and Nebraska operated their own enterprises entirely. While it was in existence, the National Indian Gaming Task Force found that virtually all Tribes engaged in bingo did so pursuant to duly adopted Tribal ordinances or resolutions of the Tribe's governing body.

Since the Iowa Tribe of Kansas and Nebraska has operated its Bingo enterprise, it has done so purusant to its own ordinance. The Iowa Tribe of Kansas and Nebraska Bingo Ordinance was enacted by the Iowa Executive Committee with final approval by the General Council and strictly regulates the enterprise. The Ordinance specifies how the money is to be handled and accounted for, and that all revenues are to be appropriated by the Tribal government for governmental purposes. No individual person profits from the enterprise except by employment. The provisions of the Iowa Tribe of Kansas and Nebraska Ordinance are strictly enforced. Thus, the Iowa Tribal operation has enjoyed a well deserved reputation for honesty and efficiency as well as success. It is for these and other reasons that the Iowa Tribe of Kansas and Nebraska has vigorously worked to protect its Bingo enterprise.

The Iowa Tribe of Kansas and Nebraska has been mindful of the rights and interests of other governments and the public which it serves by its Bingo operation. On many occasions, the Iowa Tribe of Kansas and Nebraska has made generous contributions to local communities. The Tribe has also publicized the positive economic impact of its economic achievements on the local communities.

These facts are presented to you so that you may consider the legislation now pending before you more fully. Presently H.R. 1920, which was recently passed by the House of Representatives is before you. The Iowa Tribe of Kansas and Nebraska, with others, worked hard to convince the Representatives that this legislation adequately addresses the concerns raised by various law enforcement agencies, state Attorneys Ageneral and others opposed to gaming conducted by Indian governments. H.R. 1920 balances the interests of federal, state and Tribal governments without undue interference on Tribes. While there are some provisions about which the Iowa Tribe of Kansas and Nebraska has some concern, such as the centralization of too much arbitrary power in the Chairman of the proposed Commission, the composition of the Commission itself, assessments among other things, we feel that these may be adequately addressed at this Committee considers the bill. We are, however, very concerned about the proposed bill known as the "Indian Gambling Authorization and Regulation Act of 1986", also referred to as the Administration bill.

The provisions of the Administration bill are antithetical to legitimate and recognized governing rights to Tribal governments. In view of the fact that the Committee has before it alternative legislation that is designated to better address the various interest mentioned above, and that H.R. 1920 was arrived at the consultation with Tribes affected, the Iowa Tribe of Kansas and Nebraska urges you to reject the Gambling Authorization and Regulation Act of 1986. Specifically, the Administration bill would create an entirely new level of federal bureaucracy with which the Tribes would have to deal. The three person commission provided by this act would be political in nature as they would serve at the will of the Secretary of the Interior and the Attorney General and as a Commission have sweeping powers to interfere with Tribal gaming operations in a totally unprecedented manner. The Act provides for ruinous assessments from which there would be no meaningful review. Finally, if this Act were passed as it is presently drafted, it would open the door to further infringement of other presently recognized governmental rights of Tribes. If this Act is passed as written, virtually all Indian gaming operations would be rendered unprofitable and thus killed along with all the good work which is being done with these revenues. The indirect result will be increased dependence of Tribal governments and Indian people on local, state and federal resources. The passage of the Indian Gambling Authorization and Regulation Act of 1986 would be a step backward to the Termination Era of the 1950's and contradictory to the formal repudiation of House of Concurrent Resolution 108 by President Reagan.

For the above states reason and the facts set forth, the Iowa Tribe of Kansas and Nebraska respectfully request your support for

H.R. 1920 and urges your rejection of the Administration's "Indian Gambling Authorization and Regulation Act of 1986."

Thank you for your attention and support.

Respectfully Submitted,

IOWA TRIBE OF KANSAS & NEBRASKA

LEON CAMPBELL, CHAIRMAN

Attachment (1)

IOWA TRIBE BINGO OPERATION
FACT SHEET
IOWA TRIBE OF KANSAS AND NEBRASKA - APRIL 1986

NAME OF OPERATION: Iowa Tribe Party Games
LOCATION: Iowa Reservation, Brown County, Kansas
PHONE NUMBER: 913-595-6640
BINGO MANAGER: Lu Keller
DATE OF ORGANIZATION: July, 1982
NUMBER OF EMPLOYEES PER SESSION: 10
AVERAGE ATTENDANCE PER SESSION: 200
TOTAL SALARIES PER MONTH: $7526.00
TRIBAL BUDGET FOR MONTH: $8504.00

The following progrmas have been initiated and are presently functioning because of the Bingo revenues not available to the Tribe from other sources (all are at least partially funded by Bingo revenues):

Farm Operation
Cow/Calf Operation
Annual Rodeo
Senior Citizen Nutrition Program
Administrative Salaries
Land Acquisition for Economic Development
Cemetary Maintenance
Burial Assistance
Economic Development Planning
Employee Training.

Money earned by Tribal employees and members is almost entirely spent off the Reservation. Only cigarettes are sold on the Reservation.

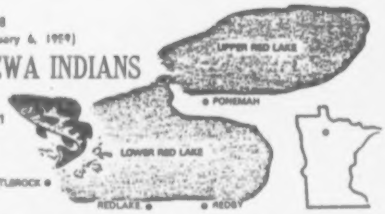
OFFICERS
ROGER A. JOURDAIN Chairman
ROYCE GRAVES SR. Secretary
JAMES STRONG Treasurer

DISTRICT REPRESENTATIVES
DAN RAINCLOUD JR
ANTHONY WILSON
GEORGE F. JONES
ADOLPH BARRETT
GERALD F. BRUN
ROMAN P. STATELY JR
LAWRENCE BEDEAU
ALLEN ENGLISH JR

ADVISORY COUNCIL
7 HEREDITARY CHIEFS

LEGAL COUNSEL
EDWARDS EDWARDS BODIN
DULUTH MINNESOTA

TRIBAL COUNCIL
Organized April 18, 1918
(Revised Constitution and By-Laws, January 6, 1959)
RED LAKE BAND of CHIPPEWA INDIANS
Phone 218/679-3341
RED LAKE, MINNESOTA 56671



NATIONAL TRIBAL CHAIRMEN'S ASSOCIATION

PREPARED STATEMENT OF ROGER A. JOURDAIN, CHAIRMAN
RED LAKE BAND OF CHIPPEWA INDIANS

I have been asked to speak today about the most central issue in Indian Affairs, tribal sovereignty. Sovereignty is a term we have always understood, long before introduction of lawyers, courts and federal employees. It is the main concept embodied in our treaties.

Simply stated it is our authority to govern and exercise those authorities necessary to maintain an orderly society in our communities. It is the power of self-government.

It is the power to enact laws and to require people to abide by them. It is the power to tax, to grant marriages and divorces, the power to provide for the adoption of children, to zone property, to regulate hunting and fishing and to control our own natural resources.

In short, it is the power which external political forces fear most. As a result, it is a power which these forces constantly try to limit or erode altogether.

The threat to the sovereignty of American Indian Tribes is one of the most critical issues that we face today. In addition to the ever increasing difficulty of dealing with economic survival, the maintenance of cultural traditions, languages, customs and spiritual existence that all Tribes have faced for centuries, the constant erosion of the sovereign rights of American Indian Tribes poses a threat to our very existence as a separate and distinct people.

Indian tribes have survived since the creation because we have always understood and respected our own sovereignty and because we have fought to protect it in war, in court and in the Congress. We stand here today ready and fully capable of continuing that fight.

We know who we are and we find it difficult to understand why the United States Government, which professes to be a government of the people, has so much trouble understanding tribal government which stood for those principles long before Thomas Jefferson wrote them down.

Our ability to withstand the continuous attacks on our tribal integrity is seriously jeopardized by some of the new breed of policy makers who make up the Congress of the United States, by the adverse philosophies of those who are appointed to judicial positions and Presidential appointees who direct the different departments of the United States government which deal with Indian Tribes.

The statesmen we once had in Congress have all but disappeared. Humphrey, Mondale, Abourezk, Thye, Kennedy, the list goes on of people whom we once counted on to maintain the government-to-government relationship with Indian tribes, the first Americans.

Instead, we now have some individuals who abrogate their responsibilty to exercise the plenary power of Congress by turning it over to the Office of Management and Budget, to the decisions of career bureaucrats in the various executive departments and finally to the decisions of the Courts. It appears that certain of these elected officials are much more concerned with foreign affairs, the Philippines, the Haitian government, the Jewish state of Israel, the South American countries and the blacks of Africa, than they are with the American Indian Nations, those who gave so much that the American government became a world power.

If the American Indian Nations were given the same amount of consideration and financial assistance as these foreign countries, we would be well on the way to the restoration of our economic self-sufficiency.

In the first six months of 1986 alone we have seen the Department of the Interior try to force tribes to gain state approval for tribal hunting seasons.

We have seen a congressional proposal to put Indian gaming under state jurisdiction. We have seen the Indian Health Service proposing to ignore tribal membership standards and place a one-fourth blood eligibility standard for IHS services. We have seen proposed cuts to our budget that has already been cut by over 35%.

All of these actions are a direct attack on tribal sovereignty. and the provisions of our treaties.

We have seen the BIA and the Department of Justice tell Congress of their fears of possible relationships developing between tribal governments and organized crime. This is the ultimate insult.

The Red Lake Band of Chippewa Indians believe that the first instance of organized crime on Indian reservations occurred when the Bureau of Indian Affairs was given the responsibility for managing Indian Affairs.

The Red Lake Band of Chippewa Indians has been systematically robbed of overwhelming amounts of natural resources by the United States Government's contribution to organized crime, the Bureau of Indian Affairs.

Such criminal activities include the rapacious plunder of our pine forests, the fraudulent acquisition of tribal lands, the mismanagement of BIA operated sawmills and the constant struggle against the monstrous bureaucracy of the BIA which has imposed severe limitations on our efforts to regain our original self-sufficiency.

President Reagan's Indian Policy, the Indian Self-Determination Act, and numerous other federal statutes require tribal consultation before any unilateral decisions are made.

Since no one has attempted to consult with me on these issues, I thought just perhaps these non-Indians define the term differently than I do. So, I got a copy of Webster's New Collegiate Dictionary and looked it up. Consultation, p. 241: "the act of consulting", "to ask the advice or opinion of", "to deliberate together". Deliberate, p. 297: "to ponder issues and decisions carefully."

Well, ladies and gentlemen, we've seen a lot of pondering by the Department of the Interior but they sure have managed to forget about the together part. In fact, Ross Swimmer has recently decided to close, without tribal consultation, the only BIA office whose specific function was to communicate with tribes and the Congress.

Today, the issue that we are bringing to your attention is the proposed legislation on developing Indian gaming economy.

In March of 1983, the so-called Indian Bingo Task Force met in Minneapolis. At that time we cautioned those creating the Task Force that they were heading directly into the well of negative federal legislation that would further diminish the sovereign rights of Tribes.

The Red Lake Tribal Council is firm in its strong opposition to any compromise of our Indian aboriginal rights. We are already exempt from Pub. L. 83-280, the federal statute granting state jurisdiction over some reservations.

If the Congress persists in obtaining federal legislation of Indian gaming we will demand that we be exempt from that legislation also. We do not need a new muddle of BIA policies, regulations, and red tape. Nor do we need a bureaucratic federal Gaming Commission. The Red Lakd Band of Chippewa Indians already has enacted gaming laws. All we need now is money to implement these laws.

It is no answer to say, as do some tribes and well-meaning but misguided tribal attorneys, that "good" legislation should be enacted.

The most recent example of federal legislation that should provide tribal leadership with the exact sense of how "good" legislation can go awry is the Nuclear Waste Policy Act of 1982.

According to this law, Indian tribes were to be treated on the same basis as states. In actual practice this did not happen.

Instead, Indian tribes were forced to fight against nameless and faceless bureaucrats for funding to counteract years of advance study by government consulting firms.

The end result was that tribes received the pittance of $30,000 while states received an annual budget of a quarter of a million dollars and more. It is clear that political appointees determine the implementation of congressional actions.

There is no reason to believe that the proposed gaming legislation will be any different.

Indian tribes possess inherent rights of self-government that precede the government of the United States. These inherent rights predate the U.S. Constitution. These rights were not given to us by anyone. We always had them.

The United States Supreme Court has long recognized this principle and upheld the rights of Indian tribes to establish our own forms of government which includes the right to formulate law and order codes.

Any infringement on these rights by states or local municipalities must be considered in the same light as the imposition of American jurisprudence upon the governments of its neighbors, Canada and Mexico.

According to our tribal traditions, customs and practices, gambling has been a form of tribal recreation for centuries. The intra and inter-tribal games of chance, hand games, stick games, moccasin games and contests of physical skills have existed long before the arrival of Columbus--the first boat people.

While these games of chance reached high levels of organization and consierable personal property changed hands frequently, there was never any hint of involvement of "organized crime".

When bingo was introduced to Indian tribes by the missionaries of organized religion, the tribal adherents and devotees of this new form of gambling adopted the game fervently, some even with religious fervor.

Now that it appears that some Indian tribes may succeed in utilizing this game of chance as a means to improve their economies, the people who are descendants of the original introducers of bingo would now like to see our economic efforts restricted.

For the State of California to be the initiator of a court case that may decide the future of all Indian tribal bingo enterprises is to bring the role of the courts to new heights of asinine nonsense.

California has municipalities, such as Bell Gardens, which have developed gambling casinos that rival or surpass any developed by the states that acknowledge they have legalized bingo. The Bicycle Club of Bell Gardens provides high stakes gambling of such a magnitude that the casinos of Nevada are deprived of many of their former customers. There are many others that provide tremendous economic benefits to local municipalities, all in a state which claims that it has not legally sanctioned bingo. Why should Indian tribes be singled out for potential adverse action?

The Red Lake Band of Chippewa Indians view the sanctity of our land, people and resources with a seriousness of purpose that will not permit infringement from external sources.

Here I must correct the misconception of the Assistant Secretary - Indian Affairs. The Red Lake Reservation was not established by federal authority. The Red Lake Reservation was reserved by the Red Lake Band of Chippewa Indians from over 10 million acres of land given to the federal government consistent with the pledge of the Northwest Ordinance of 1787 that, "The utmost good faith shall always be observed toward the Indians; and their property, rights, and liberty never shall be invaded or disturbed unless in just and lawful wars authorized by Congress . . . ."

Should the Supreme Court decide to authorize further encroachment or infringement on the inherent rights of Indian tribes to regulate our own affairs it should be taken by us as a declaration of war! Such declaration of war may come in an adverse Supreme Court decision in the Cabazon gaming case.

If the history of the American Indians were accurately depicted, any serious student of American history would realize that a barely concealed war has been waged by the United States against tribes for the past four centuries.

The Red Lake Tribal Council believes that each of us as tribal leaders must exercise constant vigilence in this new era of attacks on tribal sovereignty.

Tribes across the nation must be placed on alert to the contemporary aspects of the continued erosion of Tribal sovereignty.

While this Administration gives lip service to self-determination and the maintenance and strengthening of the government-to-government relationship between American Indian tribes and the federal government, in practice, the legislation they have supported has undermined rather than strengthened tribal governments' sovereignty.

Since California seems to be a pivotal state in this particular struggle, tribes must be aware of the connection that exists from the White House through the Attorney General's office, and the various departmental secretaries. This viewpoint supported by anti-Indian legislators will make it extremely difficult for tribes to gain the kind of legislation necessary to protect their inherent rights and sovereign status.

We have long respected the sovereign powers of the United States and we have seen them respect the sovereign powers of other nations. I, therefore, cannot understand why they have so much trouble respecting ours.

The United States Government continues to act as if they created our sovereignty. They didn't. Indian tribes were sovereign long before the white man came to this continent and we will be sovereign long after they destroy themselves by poisoning the earth and murdering each other in urban street crimes.

Sovereignty is a state of mind, supported by actions, and it is our responsibility to take those actions necessary to protect it.

I charge each of you personally to visit the offices of your own representatives and senators and the Chairmen of the important House and Senate Committees while you are here this week.

Visit every time you come to Washington. Go in great numbers. Start with the request to be exempt from Gramm-Rudman. Remind them that tribes are not minority recipients of federal domestic assistance programs.

Tribes must develop ongoing, powerful communication with the Congress to prevent legislation which erodes tribal sovereignty and to promote a continuous congressional vigil of arbitrary Administration actions.

If the BIA is going to close the Office of Public Information which gets 700 requests for information from Congress each year, we will have to assume the BIA's responsibility for consulting with Congress.

We have to do every other task with which they are charged if we want it done right.

On my reservation we are contracting to operate all BIA programs because we have to. The Secretary of the Interior has consistently failed to perform the trust responsibilities of his office in respect to the Red Lake Band.

If the BIA does not think it has to consult with Tribes or with the Congress, let the Tribes and the Congress consult each other. In my opinion, the trust responsibility of the BIA to the tribes has been replaced with a trust responsibility that is directed toward personal advancement, personal retirement and self-perpetuation.

I am honored to look out on this room full of tribal leaders, who by coming here today are making a statement. We are sovereign. We always have been. We are not about to let that change.

Fellow leaders, I have joined with you in the struggles of the past. I join with you now in the struggles of today. I pledge to join with you in the struggles of the future to protect our treaties and the sovereignty of our Nations.

Sovereignty is ours to keep. Let us again come together Nation to Nation, and live the way the Creater intended.

Thank you.

PREPARED STATEMENT OF HUBERT H. HUMPHREY, III, ATTORNEY GENERAL, OF THE STATE OF MINNESOTA

INTRODUCTION

I am submitting these comments on proposed Indian gaming legislation in my official capacity as Attorney General of the State of Minnesota. My testimony should not be viewed as necessarily reflecting the conclusions of any other constitutional officer of the state, or the state legislature.

As the chief legal officer of a state which contains several Indian gaming operations, I have a strong interest in the subject. I also have some working knowledge about past issues that have arisen, and future issues that might arise, in the context of Indian gaming regulation. I hope that the Committee will take the time to review my remarks. If an Indian gaming bill is to be enacted, I want to do my best to see that it is an understandable and workable bill. The purpose of this submission is to raise some issues the Congress needs to consider further, and to make suggestions that I think will improve the bills under consideration. My staff and I will be happy to discuss this subject further with the Committee or its staff at any time.

SUMMARY

The major general points included in this testimony are these:

1) I do not oppose certain Indian gaming operations being free from state regulation. However, such operations should be limited to a specific few activities such as "traditional" bingo, pull-tabs, and punch boards. Additionally, the operations should be subject to serious federal oversight.

2) I am extremely concerned that the provisions of a gaming statute be precise enough to avoid endless future litigation. Congress must be clear as to what its intent actually is with regard to gaming regulation. Too often that intent is left ambiguous, with the sure result being years of litigation over what Congress really meant by imprecise bill language. Many of my comments are directed at wording problems in the proposed legislation that need to be clarified as to intent, or drafted with more precision.

3) Gaming that is not regulated by states generally should be limited to reservations. The federal government should not encourage the creation of regulation-free enclaves away from traditional reservation areas or in primarily non-Indian metropolitan areas.

4) A federal regulatory scheme must be meaningful. It must be workable - not overly cumbersome. It must above all else be enforceable, both with regard to the personnel and money needed to practically implement it, and with regard to appropriate penalties and forums for dealing with violations of its terms.

5) Any federal legislation should address the issue of jurisdiction over non-Indians. Non-Indians can become a part of Indian gaming by managing games, working for Indian gaming operations, or playing the games. Congress should be clear about whether it intends to pre-empt state jurisdiction over all kinds

of non-Indian participation, some kinds, or no kind. Ambiguities over this issue present serious problems.

6) I believe that a mixture of the approaches of H.R. 1920 and S. 2557 will result in the best Indian gaming bill. I am troubled by critical ambiguities in several sections of H.R. 1920, and am skeptical about the ability of its somewhat cumbersome commission and procedures to provide meaningful oversight. Although S. 2557 is clearer in its intent and drafting, it may create an overly detailed and narrow regulatory system that deprives tribes of beneficial autonomy in the field of gaming regulation. A compromise between the two bills might yield a product that more appropriately balances federal, state, and tribal interests than either bill yields on its own.

The rest of this testimony will address the above points in more detail. I will offer detailed suggestions for language changes to H.R. 1920 and S. 2557 where appropriate. Throughout, I will be emphasizing the need of those of us at the state level to have clear and precise indications of congressional intent in any legislation that is passed. Congress has the power to decide what happens in the field of Indian gaming. It has a responsibility to states, tribes, Indians, and non-Indians to set out the ground rules in a manner that can be understood by all.

ANALYSIS

I. NEED FOR FEDERAL LEGISLATION

There should be federal legislation dealing with Indian gaming. Without it, such gaming will forever be the subject of court actions throughout the United States. It is possible for each federal circuit and each state court to reach different results on any number of questions dealing with such gaming. The federal courts that have dealt with gaming issues have admitted that they are trying to guess what the intent of Congress was in passing federal statutes such as Public Law 280 and the Assimilative Crimes Act. In coming to conclusions about the ability of states to regulate Indian gaming, courts also have admitted the closeness of the question. Decisions have ended up being made on the basis of the canons of construction which require that ambiguous statutes be interpreted liberally in favor of tribes. See Seminole Tribe of Florida v. Butterworth, 658 F.2d 310 (5th Cir. 1981).

It would be absurd to force the courts to continue guessing at congressional intent with regard to this increasingly important issue. Congress clearly has plenary power over Indian affairs. United States v. Wheeler, 435 U.S. 313 (1978); Lone Wolf v. Hitchcock, 187 U.S. 553 (1903). Congress provides direction to the courts in this area; the courts merely interpret congressional intent. The field can and should be clarified by congressional legislation.

A) Comments on Bill Language

1) The "findings" section of H.R. 1920 and S. 2557 both address the confused state of court rulings, illustrating the need for legislation. S. 2557, however, portrays the legal status quo in a more accurate and objective manner than does H.R. 1920. If findings are are to be included in a bill, the S. 2557 version is preferable. In particular, H.R. 1920 in Sec. 2(a)(2) does not reflect the facts that only a few lower federal courts have ruled on jurisdictional gaming questions; that some state courts have differed from the federal courts' analyses; that the U.S. Supreme Court has not yet ruled on the issue; that courts have not ruled that tribes have "exclusive" rights to regulate gaming activities engaged in by non-Indians; and that the basis of lower courts' rulings has not been constitutional doctrine but rather an interpretation of ambiguous federal statutes. Sec. 201 of S. 2557 addresses these concerns better, but for the sake of accuracy the reference to "exclusive right" in sec. 201(b)(4) should be changed to eliminate the word "exclusive," in light of the jurisdictional uncertainties concerning non-Indians.

II. SCOPE OF ALLOWABLE INDIAN GAMING

I do not oppose certain Indian gaming operations being free from complete state control. I understand that such operations have provided a number of tribes with badly needed revenue, jobs, and perhaps respect. Most of the current benefits have come about as a result of bingo, pull-tab, or punch board operations - gaming activities which traditionally have been viewed in a slightly different manner than casino or other forms of "hard" gambling. Bingo, pull-tab, and punch board operations can continue to be successful money-makers for tribes as long as a competitive advantage over other state-regulated operations exists with regard to prize money and certain other features. A balancing of state regulatory interests, concerns about corruption, and revenue interests of tribes can be achieved with regard to these games.

I would be extremely reluctant to go beyond bingo, pull-tabs, and punch boards when talking about operation outside of state regulation, however. The revenue interests of tribes do not require it, and the increased potential problems of regulation, corruption, and spill-over effects to non-reservation areas are strong arguments against it.

I also urge that any federal bill define "bingo" or "pull-tabs" or "punch boards" very precisely and narrowly. It is no secret that many games being called "bingo" today are thinly disguised attempts to duplicate casino gambling. Also, video machines are increasingly being used for gambling purposes. Ambiguity should not exist over what Congress chooses to allow to proceed outside of state control. If Congress chooses to allow games mimicking roulette or blackjack, for example, that should be clear from bill wording. I suggest only allowing bingo, pull-tabs, and punch boards - but defining them each precisely and narrowly.

A) Comments on Bill Language

1) H.R. 1920, section 19(5)(A) defines Class I gaming as traditional social forms of Indian gaming, and sec. 11(a)(1) puts it within the exclusive jurisdiction of tribes, and outside of even federal control. Class I gaming, however, is defined in a way that could include non-Indians as participants as long as it was a "traditional form" of gambling in connection with some tribal "celebration." This section would be tighter, and the intent more directly accomplished, if the definition referred to Class I as gaming engaged in by "Indians" rather than as gaming engaged in by "individuals."

2) H.R. 1920, section 19(5)(B) defines Class II gaming to include but not necessarily be limited to bingo, lotto, pull-tabs, and punch boards. The definition also includes "other games similar to bingo." The definition of Class II gaming is critical because Class II gaming is the big category of operations that Congress will allow tribes to engage in free of any state control but subject to certain federal controls. The phrase "other games similar to bingo" opens a wide door for all sorts of future litigation over what games or variations are "similar" to bingo so as to fall into the "allowable" category. Congress has a responsibility to determine what it does or does not want to allow. The phrase "other games similar to bingo" should be eliminated. If additional games are to be included in Class II gaming, then they should be identified and defined with

particularity. Similarly, "bingo," "lotto," "pull-tabs," and "punch boards" should be defined precisely.

3) H.R. 1920, section 11(a)(2) provides that Class II gaming may be conducted on Indian lands if properly authorized by tribes. Subparagraph (B) says that such gaming is not authorized in states where an activity is "prohibited by the State . . . as a matter of State public policy and criminal law." That phrase is borrowed from lower federal court rulings interpreting the scope of Public Law 280 and the Assimilative Crimes Act. The phrase is vague and subject to litigation. Congress need not be bound by such terminology when it is addressing anew the subject of gaming. Two things could be done to change the section. The most direct approach is to authorize Class II gaming (as the bill does), and simply name the states which are excepted from the bill because they now ban such games. If at some later date those states change their laws to allow bingo, they can be removed from the exception. It will then be clear exactly where Class II gaming is and is not allowed.

If some general phrase such as appears in subparagraph (B) is deemed to be required, it must be defined with more precision. An obvious question about the present wording relates to activities that are heavily controlled by a state, and which have felony or gross misdemeanor penalties for violation of the controls. Are such activities "prohibited" as a matter of "public policy and criminal law?" Does it make a difference if a state legislature includes in the statutes a declaration of public policy about such controlled activities? Courts and states should not have to guess what Congress means. If the section is to remain, it should contain examples of what would fall into the category of "prohibited . . . as a matter of state public policy and criminal law."

4) S. 2557, section 301(a)(1) defines bingo. The definition is important because it is the only activity which would be authorized free of state control on reservations. For the sake of reservation economics, and because many reservations currently operate such games, the definition should be expanded to include pull-tabs or punch boards. Those terms should, however, be defined with precision. Video games should be excluded from the definition.

III. THE PROBLEM OF NON-INDIANS

A federal bill should address the issue of jurisdiction over non-Indians participating in Indian gaming activities. The current state of the law is unclear about whether states have the jurisdiction to regulate non-Indian gaming participation in Indian games even if states cannot regulate Indian participation in such games. It is an important concern because there obviously is a great deal of non-Indian involvement at the participant, employee, and managerial levels of Indian gaming operations.

If legislation is passed which incorporates serious federal oversight of Indian gaming operations, jurisdiction of states over non-Indians participating in the operations may be removed without unacceptable consequences. If serious federal oversight is not present, states should keep jurisdiction. In any event, the non-Indians problem should be dealt with in the legislation.

A) Comments on Bill Language

1) S. 2557, section 401 addresses this issue reasonably well. All state laws pertaining to the licensing, regulation, or prohibition of gambling would apply in Indian country except that "gambling" would not include bingo conducted in a bingo establishment licensed pursuant to the bill. The inference is that such state laws would not reach non-Indians so long as the bingo was conducted in accordance with federal law. To make it clearer, though, the new wording of 18 U.S.C. § 1166 could be changed to read: "Except as provided in subsection (c) with regard both to Indians and non-Indians, all state laws. . . ."

2) H.R. 1920, section 11(a)(2)(A) allows tribes to regulate Class II gaming if a tribe adopts a proper ordinance that is approved by the Commission. No mention is made of whether that tribal regulation is intended to pre-empt state regulatory authority that normally would exist over non-Indians even on reservations. The intent of this section should be made clear. As indicated earlier, pre-emption may be acceptable if there also is some serious federal oversight relating to non-Indian participation. If pre-emption is intended, it could be accomplished by changing 11(a)(2)(A) to read: "Except as provided

in subparagraphs (B) and (C), Indian tribes may engage in, or license and regulate, to the exclusion of states, Class II gaming activity. . . ."

IV. LOCATION OF INDIAN GAMING

In testimony to the House Committee on Interior and Insular Affairs in 1984, I expressed my concern about the prospect of jurisdictional havens or "gambling zones" free of state control that could appear in non-Indian communities far from reservation borders. I stated that:

> If this were to happen on a large scale, state regulatory schemes and enforcement policies relating to gambling could be thrown into chaos, especially if non-Indians may operate gambling activities on such land outside of any state control. . . . The creation of many checkerboard pockets of Indian county for gambling purposes may well cause far more problems than exist now.

This is still a concern. However, both H.R. 1920 and S. 2557 appear to address this problem in ways which lessen my concerns.

A) Comments on Bill Language

1) H.R. 1920, section 3(a) prohibits Class II or III gaming on any trust lands acquired by the Secretary for a tribe after December 4, 1985, if such lands are outside of the tribe's reservation. An exception to this rule is if a trust acquisition outside of a reservation has the concurrences of the Governor of the state, the state legislature, and governing bodies of the relevant county and municipality. This section is good. It limits checkerboarding, but provides some flexibility for special circumstances.

There is, however, one potential problem. Section 11(a)(2)(A) allows tribes to license or engage in Class II gaming activities on all "Indian lands" where there is a proper tribal ordinance. "Indian lands" is defined in section 19(c)(3) to include not only reservation lands but also lands held in trust for individuals, or lands subject to a restriction by the United States against alienation. When all of these sections are combined, it becomes apparent that Class II gaming may take place on all individual trust land, whether on or off a reservation, and whether purchased in the past or future. This puts an obvious premium on developing individual trust allotments outside of reservations for gambling purposes. I am not sure whether the bill intended to do this, but I do not think it should be done. Also the bill creates an incentive for individual Indians to purchase off-reservation land and turn it over in trust to the Secretary. Such individual trust land would not be subject to the gaming ban contained in section 3(a).

I believe that this is a loophole that should be closed. It could be done by adding a clause to the end of section 3(a) which would read: " , and on any lands outside of reservations held in trust by the United States for the benefit of any individual or which is held by any individual subject to a restoration by the United States against alienation."

2) S. 2557, section 301(a)(14) and section 307(c)(4) deal with location issues in a reasonably straight-forward way. Section 301(a)(14) defines "reservation." Section 307(c)(4)

limits bingo establishments to lands that have been within reservations for at least ten prior continuous years, except that certain existing facilities are grandfathered in. Section 401 then applies state gaming laws to all other kinds of trust land that may be outside of reservations.

A combination of features from both bills may make the most reasonable package. S. 2557 could be amended by providing for special off-reservation acquisitions if agreed to by appropriate state entities (as in H.R. 1920, section 3(b)), and the "ten prior continuous year" requirement could be eliminated. The result would be a clear declaration that Indian gaming facilities that are not subject to state control be limited to reservation land, with appropriate flexibility to take care of special circumstances.

V. STRUCTURE OF THE REGULATORY COMMISSION

Both proposed bills set up new commissions with authority to provide oversight for Indian bingo operations. Since state regulatory requirements and enforcement mechanisms will not have any applicability to Indian gaming authorized by the bills, a large responsibility rests with the commissions. Since large amounts of money are involved, since existing state regulatory machinery will not be available, and since there is a shared understanding of the need for some real outside oversight, I am concerned that the new commission be able to function smoothly and efficiently. It should not be subject to pressure or control from either the entities being regulated or from partisan politicians. I find that the approaches to the commissions in both H.R. 1920 and S. 2557 can be faulted on certain grounds. Once again, a compromise between the approaches of the bills might be better than either approach standing alone.

A) Comments on Bill Language

1) H.R. 1920, section 5 establishes the National Indian Gaming Commission. It is composed of eight members. The chairman serves at the pleasure of the Secretary. Five members, a majority of the commission, are appointed for three year terms from a list approved by tribes who engage in gaming - in other words, who will be subject to commission oversight. One member is selected by the U.S. Attorney General, and one is selected by the Secretary to represent states. No member except the Chairman is a full-time employee. Vacancies are to be filled by a majority vote of the Commission.

I am skeptical about the ability of a commission made up in this fashion to function in an efficient oversight capacity. One problem is that the commission is too large to be workable. This problem is made more serious because commissioners are not full-time employees. They probably will be from all across the country. They will have other jobs. Meetings cannot be frequent; nor will they likely be extended. Nonetheless, much of the important work of the commission is expected to be done as a commission, by majority vote. This simply appears to be too cumbersome a structure to provide efficient oversight, and to be able to gear up quickly for what is going to be a big, complex job. I suggest a smaller commission, perhaps from three to five members. They should be full-time employees, and should be expected to devote full time to the many duties of the commission.

A second problem is with the manner of appointment, and the nature of the terms. I am not comfortable with a majority of the commission being selected, in effect, by the very enterprises which are subject to oversight. This problem is made worse by the fact that the commissioners' terms are relatively short (three years) and that commissioners will have to have outside sources of income. The possibilities of conflicts of interest and implicit pressures are obvious. A related problem exists with the Secretarial appointment of the chairman. Rather than someone who serves at the pleasure of the Secretary, I would be more comfortable with a chairman who was appointed for a set term of years. Just as the commission should not be subject to undue pressures by the industry it oversees, neither should the chairman be subject to undue political pressures that are inherent in a job that is subject to termination with or without cause.

In a worst case analysis, a commission set up as in H.R. 1920 starts out split, and rapidly becomes crippled by factionalism. The commission could easily become non-functioning as a result of a boycott of four members, or even by the problems inherent in scheduling meetings that fully-employed people from all over the country can attend. The duties of the commission under H.R. 1920 are substantial. Under sections 7(a) and 7(b), for example, the commission (not the Chairman of staff) has the delegated responsibility to monitor gaming activities, inspect premises, conduct background investigations, demand access to books, enter into contracts, hold hearings, adopt regulations, approve budgets, assess administrative costs to tribes, assess civil fines, issue subpoenas, and close gaming operations. These functions require a smaller, full-time commission less subject to the pressures inherent in the commission established by H.R. 1920.

2) S. 2557, section 302 establishes a commission known as the Indian Bingo Commission. It is composed of three full-time members. Two shall be deemed to be employees of the Department of the Interior, and are appointed by the Secretary. One shall be deemed to be an employee of the Department of Justice and is appointed by the Attorney General. The commissioners are to have "knowledge and ability in the areas of gambling regulation, law enforcement, and Indian affairs." The commissioners serve at the pleasure of the Secretary or Attorney General.

I support the concept of a smaller commission that S. 2557 embodies. However, there are some changes that should be made in its make-up. I assume that the intent of section 302 is to consider commissioners to be Interior or Justice employees for purposes of employment benefits - not to require that commissioners be appointed from existing Interior or Justice personnel. If there is ambiguity, it should be made clear that commissioners can be hired from anywhere, and that they do not have to come from a pool of current federal employees.

I can understand Indian critcism of the fact that commissioners serve at the pleasure of he Attorney General and Secretary, and are appointed without Indian input. The commissioners under S. 2557 are subject to the same partisan pressures I described earlier. One way around this would be:

1) to make commissioners presidential appointees for a term of years, removable only for cause;

2) require that they be appointed only after a period of time during which tribes and tribal organizations could submit recommendations for appointees;

3) require that at least one member of the commission be an Indian; and

4) require that appointees be confirmed by the House Committee on Interior and Insular Affairs, and the Senate Select Committee on Indian Affairs. The commissioners then would be full-time and be relatively free from undue influence by any group. Such a commission might be able to proceed with its large and important job efficiently and with a minimum of organizational or procedural difficulties.

VI. OPERATION OF THE REGULATORY COMMISSION

The manner in which federal oversight of Indian gaming is carried out obviously is a central feature of any federal gaming bill. I believe that federal legislation is going to have to strike a balance between interests seeking complete tribal control over Indian gaming and interests seeking complete federal control over Indian gaming.

To insure the integrity of the games, to protect the tribes involved, and to prevent adverse spill-over effects of corrupt or badly run games, there should be serious but not necessarily complete federal regulation. I worry that the H.R. 1920 approach leaves too many loopholes to constitute adequate federal oversight, but that S. 2557 makes the mistake of eliminating most tribal discretion over regulating gaming operations. Again, a mixing of provisions of both bills may be appropriate.

The focus of H.R. 1920 is for a federal commission to review and approve or disapprove tribal ordinances and management contracts. Sections 11 and 12 list certain base requirements that must be met in ordinances and contracts. Beyond that, tribes have discretion to set their own requirements and operational schemes. I am a little unclear as to how the act provides for any oversight of gaming operations themselves, or how violations of approved tribal ordinances are handled. H.R. 1920 authorizes penalties (against an "Indian gaming activity or a management contractor") for violations of the act or regulations adopted under the act. However, the focus of the act and regulations are on approving ordinances. I assume the real oversight and enforcement comes with seeing that the tribal ordinances and licensing requirements are being followed. If any ambiguity exists (and I think it does) as to whether federal penalties can be assessed for violations of tribal licenses and ordinances, that ambiguity should be clarified. Such federal sanctions should exist. One way to accomplish this is to provide in the bill that violations of any term of approved tribal ordinances and licenses shall be construed to be violations of the act.

In a related matter, it may sometimes be the case that a tribally run establishment is violating its license or tribal ordinance. In such a case, the tribe or establishment may be subject to fines. In light of numerous federal court opinions concerning tribal sovereign immunity, an express waiver of that immunity should be made part of the legislation; otherwise, enforceable sanctions against tribes themselves may not exist.

The focus of S. 2557 is to provide for comprehensive federal regulation of the actual operation of gaming activities on reservations. The federal commission established by the bill has broad authority to license bingo establishments, license employees of bingo establishments, regulate conduct of bingo games, and approve management contracts. Tribes can also license and regulate these activities, provided that the tribal requirements don't conflict with the federal requirements. This kind of system provides strict federal regulation (not merely oversight) and a straight-forward and strong enforcement system. Since federal rules would regulate most bingo activity, any violation of those rules clearly is a violation of federal law and would be prosecuted as such. However, this kind of comprehensive regulatory package also eliminates much of the discretion and governmental authority jealously guarded by tribes.

S. 2557 may constitute overkill. Additional discretion could be given to tribes without defeating the oversight purposes of the bill. Actual federal licensing of bingo operations and employees, and federal determination of things like prize amounts or hours of operation may not be needed - provided that the requirements of approved Indian ordinances and licenses are enforceable under the terms of a federal gaming law.

A) Comments on Bill Language

1) H.R. 1920, sections 6 and 7 describe the powers of the commission chairman and the commission. Most of the important oversight and enforcement powers (other than approving tribal ordinances and management contracts) belong to the full eight member commission, and not the chairman. This set-up is very cumbersome with a part-time eight member commission. Most of the powers itemized in section 7(b) could be given to the commission or the chairman. The chairman and his staff are the full-time implementers of the legislation and should have the authority, without seeking a majority vote of the commission, to inspect premises, monitor gaming activities, demand access to books, etc.

2) H.R. 1920, sections 11(b)(3) and 11(b)(4) contain a potential large loophole. Section 11(b)(3) allows a tribal

ordinance to license gaming activities owned by individuals or non-Indians, provided that licensing requirements are at least as restrictive as those in state law. However, section 11(b)(4) says that if any tribal ordinance is submitted to the chairman for approval and is not acted on within one hundred sixty days, it shall be deemed to have been approved. Our experience with current ordinance approval authority on the part of the Secretary tells us that a large number of ordinances are not acted on within required time frames. Under section 11, a tribe could submit an ordinance which allowed a non-Indian gaming operation under much more lenient terms than state law. If the chairman did not disapprove of the ordinance in a timely fashion, it would be deemed approved - even though it contained terms that the statute never intended to allow. To correct this, section 11(b)(4) should be amended by adding a clause that reads: " ; Provided, that in no event will provisions of tribal ordinances be deemed approved that are contrary to any limitation or provision of this Act."

A related problem might exist if a state changed its regulatory requirements by making them stricter, and a tribal ordinance contained the former requirements. To deal with the possibility, section 11(b)(3) could be amended by adding a sentence to read: "If a state changes its law to make its regulation stricter, the stricter regulation shall be deemed immediately to be a part of any tribal ordinance under this subdivision and then in effect."

3) H.R. 1920, section 14(a)(1) says that the commission may authorize the chairman to levy and collect fines for violation of the terms of the act. If the commission does not so authorize, enforcement of the act might be seriously hampered. Section 14(a)(1) should give the chairman authority to levy and collect fines, with an appeal to the commission. Additionally, section 14(a)(1) should be amended to make clear that violations of tribal ordinances or licenses are considered to be violations of the act for purposes of imposition of penalties. A waiver of sovereign immunity should be included for the occasions when a fine might be levied against a tribe or tribal enterprise.

4) H.R. 1920, section 14(a)(2) says that the commission shall by regulation provide an opportunity for appeal of any fines levied by the chairman. Does this mean that no fines could be assessed until such regulations take effect? If there is ambiguity, it should be made clear that fines levied prior to adoption of regulations are appealable pursuant to the Administrative Procedure Act or some other mechanism. Additionally, it should be made clear that a quorum of the commission, and not necessarily the full commission, constitutes a proper appeals panel. This section points up another problem inherent in a part-time eight member commission. If there is a steady appeals business, there may be problems in assembling the commission members for the time necessary to deal with the procedural requirements neccessary for proper hearings.

5) S. 2557, section 305 authorizes the commission to adopt rules, and requires that rules be adopted for a great number of items ranging from employment in a bingo establishment to setting the hours and conditions of play. Several of these requirements could be removed, including those relating to employment, hours of gaming, cost of admission, cost of participation, amount of prizes, and employee compensation. Removing these required rules (and perhaps even forbidding rules in these areas) would cut down on the federal red tape and would give discretion to tribes to formulate policies to coincide with local conditions and needs.

6) S. 2557, section 308 provides for the federal licensing of employees of bingo establishments. This may be unnecessary, and certainly seems cumbersome.

7) S. 2557, section 310 deals with fines and other penalties for violation of the act. A specific waiver of tribal sovereign immunity may be needed in order to enforce fines or penalties against tribes or tribal entities. This same comment holds true for section 312 dealing with civil court proceedings.

VII. FUNDING OF THE COMMISSION

My main concern here is that the commission be funded and staffed adequately to perform its functions. Funding also must be timely so as to permit continuity of operations. Both bills contemplate that most of the commission's funding will come from fees to be imposed on gaming establishments. The main difficulties here may be practical problems of collection. An additional provision authorizing court action to collect assessments - even from trust assets - may be helpful. If significant problems of collection occur, the commission's ability to provide adequate oversight diminishes.

VIII. TAXATION OF NON-INDIANS

Congress may want to address state jurisdiction to tax non-Indians participating in or operating gaming establishments within Indian reservations. An uncertain legal situation currently exists with regard, for example, to the imposition and collection of state sales or income taxes relating to non-Indian involvement. Congress has an opportunity to clarify the matter one way or another. A provision that clearly makes state taxes applicable to non-Indians participating in Indian gaming operations should not hurt those operations but would eliminate uncertainty and perhaps much litigation.

CONCLUSION

I hope that my comments and detailed suggestions will aid the Committee in analyzing and drafting gaming legislation. My goal is to help make sure that legislation works, and that it answers more questions than it raises. I and my staff are ready to provide whatever other comments or assistance that the Committee should desire.

PREPARED
STATEMENT OF ROBERT MARTIN,
CHAIRMAN, MORONGO BAND OF MISSION INDIANS

BEFORE

THE SENATE SELECT COMMITTEE ON INDIAN AFFAIRS

ON

H.R. 1920 - THE INDIAN GAMING REGULATORY ACT
S. 902 - THE INDIAN GAMING CONTROL ACT
AND
S. 2557 - THE INDIAN GAMBLING AUTHORIZATION AND REGULATION ACT

JUNE 24, 1986

The Morongo Band of Mission Indians appreciates the opportunity to supplement our testimony of last year before this Committee. We will discuss legislative developments and update our earlier testimony. In addition there have been several significant developments surrounding our bingo enterprise that we will bring to your attention.

The Morongo Band of Mission Indians commends the Committee for its efforts in holding an additional hearing on gaming issues and urges the Committee to move expeditiously in marking-up and reporting out an adequate gaming bill.

INDIAN GAMING BILLS:

In our view, H.R. 1920, although not without its flaws, is the best legislation before the Committee. The salient features of the earlier S. 902 are incorporated in H.R. 1920 and therefore S. 902 is not separately addressed. H.R. 1920 recognizes a central governmental role for tribes in the regulation of gaming and provides a supportive federal regulatory scheme.

We are opposed to S. 2557; its underlying philosophy does not recognize Indian tribes as competent governments and as such contravenes President Reagan's commitment to a Federal-Indian policy premised on a government-to-government relationship. Moreover, S. 2557 would establish an oppressive federal regulatory scheme in which three career bureaucrats combine to become an Indian Gaming Czar with unlimited regulatory powers and a significant potential for abuse.

H.R. 1920:

H.R. 1920 is the result of an extensive effort by the House Interior and Insular Affairs Committee. The effort involved a hearing in the 98th Congress and three hearings in this Congress. Indian Tribes have participated at every stage of the political process, as have the many states and private profit gambling interests. The resulting bill reflects many compromises and clearly would not be the bill tribes would draft. It is, however, a bill that respects tribal sovereignty and recognizes, and in part establishes, a federal-tribal regulatory and jurisdictional partnership.

H.R. 1920 could be improved by making several adjustments in the size and composition of the Commission. As originally contained in the Committee amendment presented at mark-up, the Commission was to be composed of seven members, and was to have significant responsibilities for both Class II and Class III gaming. H.R. 1920, as it passed the House, provided for an eight member Commission, with no Class III responsibilities (other than over the few grandfathered in preexisting games). These changes produce several problems: the part time Commissioners have very few responsibilities; the safety device of requiring an enhanced majority (5 of 7) for certain key functions (e.g., assessments) is eliminated; and there seems to be no justification for a state member of the Commission.

If the Commission is to retain Class III responsibilities, a return to the seven member Commission, with the appointment of the Chairman requiring Senate confirmation, would be a positive change. If the Commission is simply to regulate Indian bingo and similar gaming then it is questionable whether either a seven or eight member Commission is necessary. If a smaller Commission is created, it should adhere to the same underlying principles as the H.R. 1920 Commission: independence, built in checks and balances, and the majority of the membership derived from a group nominated by the gaming Tribes.

The treatment of Class III gaming was a central issue in the House of Representatives consideration of H.R. 1920. The treatment of Class III activities as originally reported out by the House Interior and Insular Affairs Committee -- regulated by the Commission adopting state regulations -- is preferable to the moratorium on Class III activities that was eventually adopted in H.R. 1920. The moratorium is, however, preferable to the various proposals to transfer jurisdiction over Class III gaming to the States. While the Morongo Band of Mission Indians' gaming enterprise involves no Class III activities, our total experience with State and County governments over jurisdictional issues, leads us to observe that turning over any jurisdictional control to the state analogous to having the fox guard the henhouse. It is important to remember that this battle over who has jurisdiction over activities on Indian reservations did not originate with gaming and in fact may have less to do with gaming than with the battle concerning the over-all jurisdictional scheme for reservations. Since the passage of P.L. 83-280, the state and counties have opposed all Tribal exercises of self-government. The Tribes have been forced at considerable expense to litigate these issues and to date the State and counties have lost all the cases.

There are several other modifications that would enhance H.R. 1920. Setting the federal share of the costs of the Commission at fifty percent, as opposed to twenty-five percent, would more accurately approximate the portion of the Commission's function that is attributable to the federal trust responsibility -- approval of management contracts and of ordinances. The finding in section 2 stating that no federal statutes require approval of management contracts should be changed to reflect the authority contained in 25 U.S.C. Sec. 81.

S.2557:

S. 2557, primarily drafted by the Department of Justice, represents the Administration's position on Tribal gaming. The Department of Justice has made clear that its perspective has been that of a criminal law enforcement agency. It is notable, that much of the underlying framework of the bill was negotiated between the Department of Justice and the Department of the Interior at a time when Interior was without an Assistant Secretary for Indian Affairs to advocate its views as trustee. Indian tribes have had no role in the drafting of S. 2557.

As previously noted, we oppose this bill. Its narrow definition of bingo, excluding pull-tabs and other commonly utilized components of bingo enterprises, whether tribal or charitable, seriously undermines the economic viability of Indian gaming. These devices account for approximately one-third of the gross revenues of the Morongo Bingo Enterprise. S. 2557 would transfer to states jurisdiction over most other forms of gaming on Indian reservations. This is completely unacceptable. Giving states jurisdiction would obviously infringe on the right of tribal self-government. Gaming, as indicated, is but one of the many jurisdictional disputes between tribes and states. Gaming is an area where tribes and states are directly competing with each other for revenues to meet their responsibilities. A transfer of jurisdiction to states in this area would simply lock in forever the exclusion of tribes from gaming in the areas where a state (including the private non-Indian interests it normally represents) wishes to maintain the existing monopoly.

S. 2557 is also objectionable because it creates a federal regulatory Commission that has no Indian participation, but which has extraordinarily broad and undefined powers. It has only been in the last decade, with the advent of Indian Self-Determination, that Tribes have freed themselves of some of the arbitrary bureaucratic decision-making. A review of the litigation against the Bureau of Indian Affairs and the Indian Health Service demonstrates the dangers of grants of broad undefined powers to bureaucrats who have no accountability to Indian Tribes and people. S. 2557 also would have an assessment on Indian gaming to support the Commission it establishes; the federal contribution would be limited to the salaries and related expenses of the three Commissioners. For reasons stated earlier, a fifty - fifty division of costs between the tribes and federal government is more appropriate.

There are other specific provisions in S. 2557 that are objectionable, and many are indicated in the attached memorandum from our attorneys, Alexander & Karshmer, comparing H.R. 1920 and S. 2557, which we are submitting for the hearing record with this statement.

Overall S. 2557 creates a regulatory scheme that provides for a Federal-State partnership, with little or no role for Indian tribal governments, the exact opposite of the historic Federal-Tribal relationship and in direct conflict with President Reagan's Indian policy of a Government to Government relationship.

MORONGO DEVELOPMENTS:

When we testified on June 26, 1985, we noted that we were involved in litigation against the State of California and the County of Riverside in order to keep our Gaming Enterprise operative. On April 8, 1986, the United States Court of Appeals for the Ninth Circuit ruled on all aspects of the case in favor of the Tribe. (Cabazon Band of Mission Indians v. County of Riverside, et. al. and Morongo Band of Mission Indians v. County of Riverside, et. al. 783 F. 2d 900 (9th Cir. 1986)(probable jurisdiction noted,___U.S.___(June 6, 1986)). There are several portions of the decision that are particularly pertinent to the Committee's hearing process. Last June, representatives of the state of California alleged that the organized crime was involved in Indian gaming in California. We challenged the state on its vague and unsubstantiated allegations. The state in litigation argued the same point as a basis for its "interest" in having jurisdiction over the tribes. Not only did the Ninth Circuit rule against the state's claim of jurisdiction, it specifically found that "there is no evidence whatsoever that organized crime exists on these Indian reservations". Deputy Assistant Attorney General Toensing (Criminal Division) echoed the Court's finding for tribes in general in her testimony before both the House Interior and Insular Affairs Committee and this Senate Committee. Notwithstanding these determinations, unsubstantiated self-serving allegations continue to flow from California state and county officials. The 9th Circuit decision also made clear that the tribes interest in "providing revenues and jobs for its members outweighs the State's interest in protecting against the 'potential' for intrusion of organized crime."

The point of these quotes from the Ninth Circuit is not that tribes are unconcerned with potential criminal activities. The point is that unsubstantiated allegations regardless of their repetition should not be a basis for Congressional legislative activity. It is after all, tribal revenues that would be the target of organized crime. In fact, the tribal interest in protecting revenues is very great and is a major reason why many tribes support a Federal-Tribal regulatory partnership.

The above quotes also refer to tribal revenues and jobs. We are pleased to report that the Tribe, in addition to the services funded that were noted in our testimony last June, has utilized its funds to begin the rehabilitation of the tribal water system, and to provide the tribal college scholarship program for a second year. The employment rate of Tribal members and persons from the surrounding community remains high. Perhaps most important, tribal members now constitute a vast majority of the management officials (16 of 18) at the Bingo Enterprise. This is in keeping with the strategy of our management contract, which at the end of the its five year term provides for a totally tribally managed Bingo Enterprise.

The Morongo Bingo Enterprise remains the major economic force on the reservation. It has made a major difference, in terms of employment, income, and self respect, in the lives of tribal members. Were the Bingo Enterprise to cease, there is nothing to replace it, and the reservation would return to the high level of unemployment and tribal poverty previously experienced.

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MEMORANDUM

June 23, 1986

To: Firm Clients and other interested parties

Re: Comparative Analysis of the major provisions of S. 2557, the Indian Gambling Authorization and Regulation Act [the Department of Justice bill] and H.R. 1920, the Indian Gaming Regulatory Act [the Udall, Richardson and McCain bill]

From: Paul Alexander

Although similar in some respects these two bills take distinctly different approaches to regulating Indian Gaming. S. 2557 only permits tribes to continue a narrowly defined form of Bingo and creates a federal Commission with extensive but undefined regulatory powers. H.R. 1920 validates the kinds of Bingo presently being played and provides for a Federal Regulatory Commission with detailed but limited powers. Neither bill would permit tribes to operate in the so-called hard core gaming areas. H.R. 1920 creates a four year moratorium while a study is conducted to recommend the best mechanism for regulation. S. 2557 transfers without any provision for tribal consent, jurisdiction to states for all gaming other than ceremonial or bingo.

FINDINGS AND PURPOSE

H.R. 1920, sec. 2 contains 6 findings: tribes have become engaged in gaming as a means of generating tribal governmental revenues; tribes have the exclusive right to regulate gaming on Indian lands not prohibited by federal law and which is conducted within a state which does not as matter of criminal law and public policy prohibit such gaming; no existing statutes requiring the approval of management contracts; federal law does not provide clear standards or regulations necessary to insure the orderly conduct of gaming on Indian lands; a principal goal of federal Indian policy is to promote tribal economic development, self-sufficiency and strong tribal government; and tribal operation and licensing of gaming is a legitimate means of generating revenues. Section 2 also contains one statement as to Congressional purpose: federal standards and a National Gaming Commission are necessary to meet concerns regarding gaming and to protect such activities as a means of generating tribal revenues.

Title II of S. 2557 contains eight findings; one of which has four subparts. One the most extensive findings pertains to Indian gambling as often not subject to either state or federal regulation because: state criminal laws are applicable in Indian country only to the extent provided by Congress; criminal jurisdiction in Indian country is generally federal and tribal; federal law often assimilates state criminal law when there is no federal statute on point; and several federal courts have held gambling laws are regulatory and therefore not assimilated, and Indian tribes therefore have the exclusive right to regulate gambling not prohibited by federal law, which is conducted in a state which as a matter of public policy prohibit such gambling.

> Commentary: on this point S. 2557 is more detailed and perhaps less subject to misintepretation than H.R. 1920. However, H.R. 1920 clearly adopts the analysis of the various federal courts, and S. 2557 simply references those decisions. H.R. 1920's finding with respect to no federal statutes requiring approval of management agreements conflicts with the Department of the Interior's position that 25 U.S.C. sec. 81 requires Secretarial approval.

Title II of S.2557 also finds that Indian tribes generally conduct Bingo for larger stakes than religious or charitable organizations under state regulation, and do so in an atmosphere often resembling a casino.

> Commentary: the factual record for this finding is at best weak. The Interior survey indicates a great variety of tribal bingo games; many of which are fairly small scale. Most observers would maintain that even the largest scale tribal bingo operation appears more similar to church or charity bingo than any Nevada or New Jersey casino operation.

Title II of S. 2557 also finds that some tribes have expressed an intention to authorize pari-mutual wagering on horse and dog racing and on Jai-Alai; two states authorize casino gambling and a number authorize pari-mutual wagering and bingo; these activities are subject to strict control and regulation.

> Commentary: this assumption of state competence is one of the great fallacies of this jurisdictional dispute as well as the larger dispute between states and tribes over all jurisdictional issues. There is no record to indicate the level of state competence assumed by S. 2557. Even the extensive and experienced system extant in Nevada, and the newer comprehensive system in New Jersey have been subject to criminal infiltration.(See statement of Deputy Assistant Attorney General Toensing before the Senate Select Committee on Indian Affairs, June 17, 1986, page 3., hereinafter cited as Toensing statement) In other states where gambling is not a state industry, scandal has been a persistent associate. (See e.g. Connecticut's experience in developing Jai Alai [Symposium :Legal Aspects of Public Gaming, 12 Conn. L. Rev. 661 (1980)]. If this situation had developed with an Indian

tribe, one could only imagine the demands to Congress to strip the responsible government of its jurisdiction.)

S. 2557 also finds that close and constant supervision is necessary to keep high stakes gambling free of organized crime and other dishonest elements; that bingo has provided considerable economic benefits to tribes (reduced unemployment, enhanced self-sufficency, and strengthened tribal governments) however some tribes are not able to provide the necessary supervision and control over their bingo operations.

> Commentary: most of the record indicates significant tribal success; the failures are not disproportionate to those experienced by state and county governments in gambling, and most problems seem to be in the area of unscrupulous management firms, an area where the federal government has a trust obligation.

S.2557 also finds that existing federal statutes do not clearly provide an adequate basis for regulating and controlling gambling in Indian Country.

S. 2557, title II, sec.202, provides four purposes for the bill: to provide an independent statutory basis for tribal bingo; to provide a statutory basis for federal regulation, to shield Indian bingo from organized crime, to assure fair and honest games; to transfer the jurisdiction over non-ceremonial, non-bingo gambling to states; and to allow tribes already engaged in authorized bingo a reasonable time to comply with the provisions of the Act.

> Commentary: S. 2557's transfer of jurisdiction to states does not provide for tribal consent; a requisite element under the Indian Civil Rights Act for transfers of jurisdiction over Indian lands to states.

DEFINITIONS

Indian Tribe - Both H.R. 1920, sec. 19(4), and S. 2557, title III, sec. 301 (9) use the same definition.

Bingo - S. 2557, title III, sec. 301(a) defines bingo narrowly and specifically does not include "keno," "punch boards," and "instant bingo," or similar games. H.R. 1920, sec. 19 (5) divides gaming into three classes; bingo is essentially class II gaming and it is defined to include "pull-tabs, punch boards, and other games similar to bingo". Class I is ceremonial gaming,and Class III is all other forms of gaming.

> Commentary: S. 2557's definition seems without justification. Justice (Toensing statement, pages 9-10.) implies that the purpose of the definition is to prohibit lotteries that could be played at any time or at any location. The devices in question, however, are commonly used in all bingo enterprises, Indian or charitable in the states where Indian bingo is played. (E.g. California and Washington) Such devices provide a significant portion of the income derived from bingo. H.R. 1920's definition of Class II is, however, deficient in that it does not include the California-type card parlors upheld as having the same

status as bingo in *Cabazon and Morongo Mission Bands of Indians v. County of Riverside*, 783 F. 2d 900 (9th Cir. 1986).

Indian lands - H.R. 1920, sec. 19(3) uses "Indian lands as its jurisdictional basis; S. 2557, title II, sec. a(14), uses "reservation" as its jurisdictional basis. "Indian lands" are defined as all lands within a reservation, any lands in trust over which a tribe exercises governmental power. "Reservation" is defined as area established by treaty, executive order or statute for an Indian tribe over which the tribe has governmental power. S.2557 specifically provides that in Oklahoma, reservation means any land held in trust for an Indian tribe.

> *Commentary*: S. 2557 is narrower than H.R. 1920. For example, trust lands in diminished or disestablished reservations are within the purview of H.R. 1920 but probably not S. 2557. Although H.R. 1920's definition does not mention Oklahoma, it is clear that both tribal and individual trust lands in Oklahoma over which the tribes exercise jurisdiction are included in H.R. 1920.

Net Revenue - H.R. 1920 defines "net revenues" as the gross revenues of the gaming activity less amounts paid out as prizes, or paid for prizes, and less total operating expenses including management fees. S. 2557 uses the phrase "net income" which it defines as gross bingo revenues, plus income from any other sources in connection with the operation of the bingo establishment, minus reasonable expenses, including payments to management contractors.

> *Commentary*: although the definitions are similar, S.2557 adds other connected activities, and the issue of reasonable expenses. The scope of these standards, under the Commission's rule making powers, would be sources of regulatory power. For example, while it is probably clear that food activities run in conjunction with a bingo game would be included in the revenue produced under either definition, what would be the status of a tribal hotel, gas station, or similar enterprise established as a secondary economic generation from the gaming activity; would they be subject to regulation under S. 2557. Also, how are "reasonable expenses" defined and regulated under the S. 2557 scheme.

Other Definitions - H.R 1920 defines the Secretary of the Interior and the Attorney General; both bills define the Commission they establish. S. 2557, however contains a number of definitions not contained in H.R 1920. These include: "Bingo establishment" (a place licensed under S. 2557 for bingo); "Bingo employee" (a person employed by or connected with a bingo establishment); "individual licensee" a person other than a tribal licensee to whom a valid bingo license has been issued; "management contract" (any agreement between a tribal licensee and any other person or entity whereby the other person or entity operates or participates in the management of the bingo establishment); "management contractor" (a party to a management contract, not a tribal licensee); "tribal licensee" (a federally recognized tribe or entity established by such tribe holding a valid bingo license); and "gross bingo revenue" (total cash received, plus any credit extended to players, minus the total of any cash , or the value of any merchandise given as bingo winnings or prizes).

> Commentary: the additional definitions are needed because of the extensive nature of the Commission and the regulatory activity contemplated by S. 2557. Many of the definitions are modifications of similar statutory provisions in the New Jersey and Nevada statutes for regulating casinos. There are, however, some ambiguities. The definition of management contract does not distinguish between investors who participate in the management of the gaming enterprise, the typical management contractor, and persons who have no financial investment but are hired for their expertise as managers.

The Regulatory Commission

H.R. 1920, sec. 5-10, creates an nonpartisan, staggered term, eight member Commission; a Chairman appointed by the Secretary; a member selected by the Attorney General; five members (3 of whom must be Indian) selected by Indian tribes; and one member representing state interests. The Chairman of the Commission is full time whereas the other Commissioners are part-time. The Chairman has the exclusive power to approve Bingo ordinances or resolutions, to approve Bingo management contracts and to appoint and supervise the staff of the Commission. The Chairman, subject to the approval of the Commission, shall have the power to appoint a General Counsel of the Commission, and issue temporary closure orders. The Commission may also delegate powers to the Chairman; it may not, however, delegate the power to adopt a budget, adopt regulations for the assessment and collection of civil fines, adopt annual assessments, issue subpoenas, and permanently close gaming establishments. Members of the Commission, except the Chairman, may be removed for good cause by a majority vote of the Commission; approval of the Secretary or the Attorney General is required for the removal of members either appoints.

> Commentary: the part-time Commission, with diverse representation, but with a very strong Chairman was the result several mark-up compromises, and Chairman Udall's strong concern that Commissions could be rendered ineffective by disputes between members. The division of powers was predicated on the Commission regulating both Class II and III gaming. Without Class III responsibilities, this division may not be particularly meaningful. The National Indian Gaming Association has recommended that since the Chairman is so critical, that he or she be confirmed by the Senate.
>
> The addition of a state member at mark-up changed the membership from seven to eight, and rendered meaningless a requirement that five votes be required for such powers as the setting of assessments.
>
> The Justice Department criticizes H.R. 1920 for having a substantial portion of the Commission selected by the tribes (Toensing Statement, p. 13-14), inferring a conflict-of-interest problem. This criticism ignores the fact that the political

appointees of most federal agencies are drawn from the area of concern or expertise with which the agency is to deal. Existing federal statutes provide conflict-of-interest protection. Justice is also extremely critical of the removal provision, maintaining that a member should only be responsible to his or her appointing entity.

S. 2557, title III, sec. 302 creates, a three member Commission, the American Indian Bingo Commission. Two members are appointed by the Secretary of the Interior and shall be employees of Interior; and one member shall be appointed by the Attorney General and shall be an employee of the Department of Justice. They are to have knowledge and ability in the areas of gambling regulation, law enforcement and Indian Affairs. Salaries and related benefits for the Commissioners shall be paid from appropriated funds. The Chairman is designated by the Secretary of the Interior and all members serve at the pleasure of their appointing official and are forbidden from receiving compensation from any other federal, state, tribal , or nongovernmental office.

> Commentary: Justice Department argues that the structure of its Commission is one of the strong points of its bill. It is possible that if Indian gaming were viewed only as a law enforcement issue, ignoring President Reagan's commitment to a government-to-government relationship with Indian tribes, and commitment to Indian self-determination, such a structure might make sense. Coupled with the other grants of unrestrained bureaucratic power (discussed below), a structure that excludes tribal input from the Commission is unjustifiable.

POWERS OF THE COMMISSION

H.R. 1920, sec. 7 provides the Commission with the power to: monitor Indian gaming; inspect and examine all gaming premises; conduct or cause to be conducted background investigations; to have access to, to inspect, copy, examine, etc. any matter necessary to the enforcement of the Act; to use the U.S. mails; to procure supplies and and services by contract; to contract with federal, state, tribal, or private entities; to hold hearings; to administer oaths or affirmations; and to establish and implement such standards, guidelines, or regulations as appropriate. Sec. 11 provides the authority to approve tribal ordinances or resolutions for Class II gaming according to the standards in sec. 11. Sec. 14 provides the authority to levy fines, not to exceed $10,000 per violation, to order temporary and permanent closures of gaming activities. Sec. 15 authorizes subpoenas for persons and documents.

> Commentary: the regulatory scheme of H.R. 1920 recognizes tribes as the primary governmental bodies. The federal role is supportive and specific. The Department of Justice is critical of the H.R. 1920 for not providing a more extensive federal regulatory presence. Justice is particularly critical of H.R. 1920 for not providing for licensing and regulating employees of gaming enterprises. Such licensing is extant for casino gambling in Nevada and New Jersey; however, it is not utilized for bingo

or card rooms in states such as California. Employment of tribal members has been a significant economic benefit accompanying gaming. Turning over this traditionally local (tribal) government function to a federal entity could place these gains at substantial risk. For example, from a law enforcement prospective it might make sense to bar from employment all persons with arrest records or convictions of particular crimes; however, such a superficially reasonable standard would have a very negative impact on employment opportunities on reservations which tend to have disproportionately high arrest and criminal involvement profiles.(similar to other poverty populations)

S.2557, title III, sec 305 sets out the rule making authority of the Commission which includes the power to set rules for: the requirement of a bingo license, including the class of Bingo; the requirements of employment ,and employment licenses; fees; hours and conditions of play; types of bingo, manner of play; cost of admission; cost of participation and extension of credit; value of cash or property as prizes; dispensing alcoholic beverages; salaries (compensation) of employees; and management contracts. The Commission may either contract to the extent practicable with the tribes for the enforcement of such rules, or the Commission may authorize tribes to promulgate such rules (with specific exceptions) within their jurisdiction. Sec 307 provides the authority to: inspect any licensed bingo establishment; inspect all equipment and supplies, ascertain the identity of any person in or about a licensed bingo establishment; seize and remove any supplies or equipment; demand immediate access to and inspect , copy and audit all papers; etc.; and demand immediate access to any portion of the premises in the presence of an appropriate tribal licensee, conduct a physical count of cash, tokens, receipts, chips or anything else. Sec 310 provides the power, subject to specific notice and hearing requirements, to : suspend, modify or revoke any bingo license or management contracts; bar an individual from the bingo establishment; fine any licensee or management contractor up to $50,000 per violation. (fines go to the Treasury not to operating expenses). Sec 311 provides the Commission with the power to issue emergency orders for the suspension, modification, or limitation of a bingo licensee when there is reason to believe that any of the criminal laws, created in another title, are being violated; or when fees or charges are not paid. Sec. 314 provides subpoena power for the attendance of witnesses and the production of documents.

Commentary: clearly S. 2557 provides a more extensive system of federal regulation than does H.R. 1920. It is a system, however, that has no boundaries and infringes on tribal self-government. Under its general rule making authority the Commission can set time, day, size, dollar limits on Indian Bingo. There are no standards for the Commission to follow or for a Court utilize in reviewing any Commission action. Can the Commission set pot limits so low, that a particular Indian bingo can not compete with a particular charitable bingo? If an Indian bingo is near a state or national park that is heavily used on weekends, can the Commission limit that Indian Bingo to weekday play? Examples where the Indian economic interest could be sacrificed to some other ostensibly legitimate interest are many. Effectively, the Commission has the regulatory authority to render Indian Bingo unprofitable. The Department of Justice testified before the House Interior and Insular Affairs Committee that although it would defer to Interior on supporting Indian bingo, it would prefer banning all gambling on Indian reservations. It is therefore somewhat suspect when the Department then produces a bill that can achieve its clear preference by the back door.

Even if motives are assumed to be pure, the potential for abuse is great where there are no constraints on agency decision-making. The history of Federal-Indian affairs is replete with examples of bureaucratic excess. In part, the policy of Indian self determination is a Congressional and Presidential response to bureaucratic abuse. Ignorance of Indian issues, policies, and history could explain the scope of powers provided in S. 2557.

MANAGEMENT CONTRACTS

H.R. 1920, sec. 12 requires approval of management contracts. The Commission must obtain the name of anyone having a financial interest or management responsibility in such a contract, and for any such person complete backgrounds, descriptions of previous tribal gaming, or other gaming involvement, and complete financial statements. Management contracts are required to provide that: adequate accounting procedures are maintained and that verifiable financial reports are available to the tribal council on a monthly basis; there is daily access and daily verification of income by appropriate tribal officials; there is a minimum guaranteed payment to tribe that has preference over retirement of development or construction costs; there is an agreed to ceiling for repayment of development costs; there is a 5 year limit on the contract; and that the grounds and mechanisms for terminating such contract are specified. Contracts may not be approved where any management party: is a elected member of the tribal council on the other side of the contract; is convicted of a felony or gaming offense; has knowingly and willfully provided materially false information to the Commission or the tribe; or has been determined to be a person whose activities, criminal record, etc. pose a threat to the public interest or the effective regulation or control of gaming or enhance the dangers of unsuitable, unfair or illegal practices. Contracts shall also not be approved where: the contractor has or attempted to unduly interfere or influence for its gain, any decision of the tribal council relating to the gaming activity; the management contractor has deliberately or substantially failed to comply with the contract or gaming ordinance or resolution; a trustee utilizing the skill and diligence that a trustee is commonly held to would not approve the contract. Management contracts may be modified or voided for violations; and no management contract may not by inference transfer any real property interest. Percentage fees may be approved if they are reasonable, but may not exceed forty percent of net revenues.

Commentary: the standards developed for the management contracts are derived from the actual experiences of tribes in their dealings with contractors. Many of the provisions come from actual contracts (See Morongo contract and testimony). Implementation of these provisions would cure most, if not all, of the problems that have surfaced with Indian gaming.

S.2557, title III, sec. 306 adopts with some modifications all of the provisions of H.R. 1920. S.2557 provides that management contracts must be approved either prior to or contemporaneous with the granting of a license. The Commission is provided the specific power: to request information pertaining to the contract from any federal, state, or tribal organization (waives any bar against provision of information to which such federal organization may be subject); and to require prospective management contractors to respond to relevant oral or written questions pertaining to the contractor's suitability.

COMMENTARY: the additional powers provided by S. 2557 appear to be useful authority for a Commission to exercise with respect to management contracts.

NON-BINGO GAMING

H.R. 1920, sec 3(c) and sec 21 provide that what is known as Class III gaming (everything other than ceremonial and broadly defined bingo) shall be unlawful for a four year period (existing Class III activities are exempted) on Indian lands. The Comptroller General (GAO) is to conduct a study of Class III gaming and recommend to Congress within 2 years Class III regulatory alternatives including its view of the best alternative.

COMMENTARY: This moratorium on Class III gaming was a compromise between transferring class III jurisdiction to states, which tribes universally oppose, and having Class III gaming regulated by the Commission utilizing standards adopted from the states and contracting provisions where appropriate, which was opposed by gaming industry representatives (particularly horse and dog track operators). Under the study timing, a full Congress would exist for adopting a Class III regulatory scheme before the moratorium expires.

S.2557, title IV, sec. 401, creates within Title 18 (criminal laws) a new sec. 1166 which provides that all state laws, (except Bingo) pertaining to licensing, regulation, or prohibition of gambling, including but not limited to criminal sanctions, shall apply in Indian country to the same extent that such laws apply elsewhere in the state. In non-280 states, these laws are adopted as federal. State prosecution and enforcement is provided with priority.

Commentary: S. 2557 effects a complete transfer to state control all gambling in Indian country other than narrowly defined Bingo. No provision is made for tribal consent as would seem to be required by the Indian Civil Rights Act, or even the consent of the states or the Trustee as is provided in P.L. 83-280, the major mechanism for jurisdictional transfers. This transfer is universally opposed by tribes. The experience with state jurisdiction is perceived by all to have been disastrous. States and tribes are competitors in many areas (e.g., water, fish, taxes, etc.); when states are given the decision-making power over the competitor tribes, states generally decide issues in their own interest. The Department of Justice supports this transfer by arguing that the states already have in existence the necessary gambling regulatory mechanisms; that "federalism" requires deference to state policies regarding gambling; and that regulation by a Federal Commission would be too formidable a task and redundant of the legitimate interests of the states. (Toensing Statement 6-9). The Department also surprisingly devotes some discussion to the allocation of racing days, and the "economic chaos" that tribal competition is perceived as creating. The Department's position ignores that the H.R. 1920 proposals were to require mandatory adoption by the Commission of the state scheme, and the mandatory contracting for enforcement to the state of the ministerial or non-discretionary portion of the state regulatory scheme. In effect the Class III issue is not whether anyone wishes to provide organized crime with a weaker regulatory system, but whether the vested interests in the gaming industry, from which tribes have been heretofore excluded, will be able to maintain their monopoly, or whether market forces will be permitted to allow competition. In any event, the amendment of Mr. Lujan's adopted at mark-up (but deleted by the moratorium amendment) would have required an determination of economic impact before the issuance of a Class III license; a device that would preclude "economic chaos".

NEW LANDS

H.R. 1920, sec 3 (a) and (b) provides that Class II and Class III gaming shall be unlawful on any lands taken in trust for a tribe after 12/4/85 (date of mark-up) if such lands are outside of the tribes reservation boundaries; unless the concurrence of state and local officials is obtained.

Commentary: the purpose of the provision was to preclude promoters from obtaining land for a non-resident Indian tribe and developing it into a gambling enterprise. As drafted it has the problem of being vague concerning its application to restored tribes, newly recognized tribes, diminished or disetablished reservations, and tribes in Oklahoma.

S. 2557, title III, sec. 307 (c)(4) provides that in order to be licensed, a bingo establishment must be located on lands that for a continuous period of at least ten years have been within a the limits of a tribe's reservation. The original reservations of newly federally acknowledged tribes are deemed to meet the requirements; as are certain named gaming facilities of specific tribes

Commentary: No particular rationale is provided for the ten year rule; none is apparent. Since the definition of reservation, referred to earlier, has a specific Oklahoma component, the vagueness problem is somewhat alleviated. Questions still remain with respect to individual trust lands in Oklahoma, restored tribes, and diminished or disestablished reservations.

LICENSING OR ORDINANCE APPROVAL

H.R. 1920, sec. 11 recognizes that ceremonial gaming is within the exclusive jurisdiction of the tribes. With respect to class II gaming, tribes may by ordinance or resolution engage in, or license and regulate gaming on Indian lands, provided that the ordinance or resolution is approved by the Chairman of the Commission. The ordinances or resolutions shall be approved if: the Indian tribe retains sole proprietary interest and responsibility for the conduct of gaming; net revenues may only be used for tribal government operations or programs, the general welfare of the tribe, tribal economic development, donations to charitable organizations, or to fund local government agencies (per capita payments are subject to federal tax); annual outside audits are required; all contracts for supplies, etc. in excess of $25,000 (except legal or accounting services) shall be subject to such independent audits; and the construction and maintenance of the gaming activity is conducted in a manner that adequately protects the public health and safety. Individual gaming may be licensed but must comply with state standards.

> Commentary: the Chairman's decision is limited to the factors set out in section 11 and not a matter of discretion.

S. 2557, title III, sec. 307 authorizes the Commission to issue licenses for Bingo to tribes and tribally authorized entities. If the applicant is planning to enter into a management contract, such proposed contract must be submitted simultaneously. In addition to the detailed information concerning the management contractor that is required, the Commission must require that: the entire net income of the Bingo is deposited in a fund for the use of the general welfare of the tribe; annual independent audits of all aspects of the bingo operation by an independent CPA of PAF, the results of which shall be furnished to the Commission; the applicant has paid all fees, and will continue to pay all fees and charges; and other than the management contractor no person employed by the bingo shall receive compensation based on a percentage of the gross or net revenues. The Commission shall also ascertain the ability of the licensee (and any management contractor) to operate the Bingo in an honest manner and for the general economic benefit of the tribe. The Commission may grant, or deny a license under such limitations, conditions or restrictions that it deems advisable. The Commission may suspend, modify or revoke a license.

> Commentary: apparently as long as the Commission can link its decisions to some statutory purpose (which as noted are quite broad), the Commission has unfettered discretion in this licensing function. The approach is opposite to H.R. 1920 where the Commission operates to approve ordinances pursuant to

statutory specified criteria. Tribes could easily view the Justice bill as upsurping tribal powers of self-governance by assigning the licensing responsibility to the Commission. To the extent that any record exists with respect to tribal problems in running Bingo, those problems run to management contracts and not to licensing. Other than the ease of modeling the federal commission after state regulatory models there does not appear to be any valid rationale for stripping tribes of this government function.

S. 2557, title III, sec. 308, provides the Commission with the authority to license bingo employees. No standards are provided.

> Commentary: this is a unique provision in S. 2557. It appears to be modeled on similar provisions in the Nevada and New Jersey codes pertinent to casino employees. The need for such a system for tribal bingos has not been demonstrated. Again the Commission is provided with extensive decision-making powers that would impede on powers of tribal self-government.

COSTS

H.R. 1920, sec. 17 provides that the Commission is to be funded 1/4 by appropriations, and 3/4 from an assessment on Tribal gaming. The assessment is set at not more than 2 1/2 of the gross gaming revenues. Gross revenues are defined as total wagered monies less any amounts paid out as prizes or paid for prizes.

> Commentary: Since the approval of ordinances and resolutions, and management contracts are viewed as trust functions that would be delegated to the Commission, it was felt that a federal contribution was appropriate. The National Indian Gaming Association has recommended that the appropriations account for 50 percent of the Commission's budget and that the assessment rate be set at "not to exceed one percent of gross revenues.

S. 2557, title III, sec. 315, provides that the Commission may establish a fee schedule to cover its costs based on a percentage of gross or net revenues.(temporarily set as not to exceed five percent of gross and one percent of net per calendar month) Specific fees are to paid (in advance if determinable) for background investigations and licensing hearings. An annual report of the Commission and an audit by the Inspector General is required.

> Commentary: Except for the salaries and related expenses of the Commissioners, S.2557 contemplates the Commission being entirely supported by gaming assessments and fees. Tribes for reasons noted above have opposed this view. In addition, S. 2557 perhaps inadvertently creates a problem that legislation was to cure --resources for background investigation. The fact that most tribes have not had the financial resources to conduct background investigations, and that the Department of the Interior has been of only limited assistance, is probably the single most significant problem with management contracts. To require each tribe to pay in advance for investigations simply perpetuates this problem. The provision appears based on similar

> provisions in Nevada and New Jersey where applicants for licenses are usually economically viable persons or corporations and not economically depressed tribes.

CRIMINAL SANCTIONS

H.R. 1920, sec. 16 (b) and (c) provides that the Commission may refer information it obtains to law enforcement officials. The Attorney General is authorized to investigate, enforce, or assist in the enforcement of federal criminal laws, associated with any gaming authorized by the Act.

> Commentary: No new criminal offenses are created, the section simply reaffirms existing authority and responsibility of the Department of Justice.

S. 2557, Title IV, sec. 401 in addition to transferring most authority to the states for gaming enforcement, creates two new federal crime: 18 U.S.C. 1167. Theft from Licensed bingo Establishments (for amounts $1000 or under, penalties of fines up to $100,000 or imprisonment of up to one year, or both; for amounts in excess of $1000, penalties of fines of not more than $250,000 or imprisonment of not more than 10 years, or both); and 18 U.S.C. 1168. Theft by Officers or Employees of Licensed Bingo Establishments(for amounts $1000 or under, penalties of fines up to $250,000 or imprisonment of up to five years, or both; for amounts in excess of $1000, penalties of fines of not more than $1,000,000 or imprisonment of not more than 20 years, or both)

> Commentary: existing federal law applying to the embezzlement of tribal funds (18 U.S.C. 1163) and the Assimilative Crimes Act, would seem to already provide the authority to cover these situations.

OTHER PROVISIONS

Both bills provide detailed provisions on timing, subpoenas, appointment of employees which are to some extent follow the broader concepts underlying each bill. For example, H.R. 1920 waives Civil Service appointment, but not Indian preference in appointment of employees. S. 2557 maintains civil service appointment but waives Indian preference.

PREPARED STATEMENT OF NICHOLAS J. SPAETH, ATTORNEY GENERAL FROM THE STATE OF NORTH DAKOTA

I would like to take this opportunity to address a matter of concern and interest to the state of North Dakota. I am referring to the issue of gaming on Indian reservations. Currently, the Senate Select Committee on Indian Affairs is considering several proposals that deal with the regulation of gaming on the Indian reservations. It is my belief, that for all but social or traditional games (minimal prize limits), the state should regulate all gaming that occurs within its borders. There should be no distinction made between high stakes bingo and other forms of gaming. However, currently none of the bills before your committee adopts that position. But one of the bills, the one referred to as the administration's Indian Gambling Authorization and Regulation Act of 1986, is certainly the best of the three bills before your committee and is a compromise that the state of North Dakota can accept.

The gaming situation in North Dakota is unique in that North Dakota is the only state in the nation that has Indian reservations and that also allows twenty-one, high stakes bingo, no prize limit pull-tab and jar ticket games, raffles, and professional sports pools. These games of chance are currently allowed on 566 sites scattered throughout North Dakota with gross wagers of $160,000,000 per year. In addition, three Indian reservations are conducting high stakes bingo and other forms of legalized gaming.

It is the uniqueness of most states' gaming law and rules that represents the greatest weaknesses and problems for House Bill 1920 and Senate Bill 902. I believe that the authors of those two bills have failed to appreciate the diversity of game types that are currently played in the 39 states that have gaming. For one commission to regulate adequately and fairly Indian gaming in those states would require a large staff and great expertise. The federal government is being asked to create a large new regulatory division to administer gaming activity.

Effective enforcement of gaming requires specialized auditing and investigative skills. In addition, it also requires an understanding of the gaming industry and must possess the ability to react to changes in the method of play and other variables. North Dakota currently possesses a regulatory division that has the expertise to regulate gaming as it is currently played in North Dakota. This state effort could be hampered if Indian gaming is not regulated in a manner consistent with North Dakota's gaming style.

It has been my experience that criminal activity and/or inappropriate commercial activity increases if gaming is not regulated properly and consistently. To regulate Indian gaming properly, the federal commission would have to tailor its rules to each individual state's rules and regulations. Otherwise, if the rules were too restrictive, the tribes would not be able to compete effectively with non-Indian gaming activity causing a loss of revenue and benefits to the tribes. However, if the rules were too advantageous to tribal gaming then there would be a great tendency for non-Indian gaming organizations to resort to illegal or improper methods in order to compete.

Much of North Dakota's gaming regulatory scheme is based on the concept that the regulation of gaming requires that the regulators must not have any financial or other interests in the gaming organizations regulated. However, House Bill 1920 and Senate Bill 902 actually establishes and perpetuates the concept of interested self-regulation. When dealing with an industry that handles many hundreds of millions of dollars in cash, it is absolutely necessary that firm and sometimes costly safeguards must be instituted to protect the organizations. Failure to institute those safeguards opens up an organization to skimming and other activities which will severely diminish its income, many times without the organization even being aware of the activity.

North Dakota has created a regulatory division which is capable of promulgating those safeguards that are necessary to protect the organizations. This regulatory division is currently in place, knowledgeable of North Dakota gaming problems, and has a desire to see that all legitimate gaming organizations are conducted honestly and fairly. This regulatory scheme would be the least costly and most effective way of regulating all the gaming that occurs within the borders of North Dakota. All gaming, whether Indian or non-Indian, would then be regulated under the same rules and with the same policies thus ensuring the maximum fairness to all parties concerned.

In my view, House Bill 1920 and Senate Bill 902 are improper efforts to sidestep the clear interests that states have in regulating all gaming activities within their borders which impact upon their economies and citizens. It must be remembered that modern Indian gaming, i.e., high stakes, non-traditional gaming, is not primarily directed towards tribal members. It is meant to attract large numbers of non-Indians from outside the reservation to the reservation to provide revenue for the tribe. A review of any of the advertisements conducted by the three reservations in North Dakota quickly shows that their massive advertising campaigns are directed at the non-Indian citizens outside the borders of the reservation and even outside the borders of the state. Since Indian gaming will have such a great impact on North Dakota's charitable gaming industry and the citizens of North Dakota, it is only just that the state of North Dakota regulate that activity.

In conclusion, I believe that the proposed administration bill on Indian gaming is a significant and important improvement over both House Bill 1920 and Senate Bill 902. However, as I previously stated, I can see no rational basis for distinguishing between the regulatory requirements of high stakes bingo and that of other forms of gaming. So while the administration bill is far superior to Senate Bill 902, I still believe that the best proposal would be that the states be given the authority, along with the tribes, to regulate all gaming activity conducted within their borders.

Thank you.

Sincerely,

Nicholas Spaeth

Nicholas J. Spaeth

CITY OF ATMORE

P.O. DRAWER 1297
ATMORE, ALABAMA 36504

HOWARD SHELL
Mayor
LOUISE W. DAY
City Clerk
JAMES R. DIXON
Chief of Police
CHARLIE RUTHERFORD
Fire Chief

TELEPHONE (205) 368-2246
(205) 368-2253
(205) 368-9141
(205) 368-1377

LORAINE E. BYRD
WEBB NALL
ELDRED L. PRITCHETT
MURRAY JOHNSON
EDDIE STAFF, JR.
Council Members

A
Prepared
City

[illegible] JUN 17 [illegible] 11:05

June 12, 1986

The Honorable Mark Andrews, Chairman
Select Committee on Indian Affairs
The United States Senate
838 Hart Building
Washington, D. C. 20510

Dear Senator Andrews:

I urge you to support Bills H.R. 1920 and S. 902, which establish Federal standards and regulations for conducting gaming activities on Indian reservations and lands.

The Poarch Band of Creek Indians opened their Bingo Palace approximately five miles from Atmore on April 13, 1985. It provides jobs for over 100 people, and in addition to their payroll benefiting our area, $1,504,194.00 in prizes have been purchased from our local merchants, and monies spent in operation costs have generated another three-quarters of $1 million. Revenues from the Creek Bingo Palace will substantiate an economic foundation for the tribe to operate in other areas for years to come, and will create revenue that is essential to the development of the tribe's social self-sufficiency. These bingo games seem to be wholesome entertainment in which entire families can participate together, and I am particularly pleased with the number of elderly citizens who enjoy going out and playing bingo, as there is little offered in the way of entertainment for their age group.

Most of all, I am happy to report that the Creek Bingo Palace has not caused any police problems whatsoever; in fact, crime has not increased at all because of their locating near Atmore. We, here in Atmore, are delighted in this boost in our economy with no problems, and I thank you for giving favorable consideration to this bill.

Sincerely,

Howard Shell

Howard Shell
Mayor

HS:ahs

copy: Senator Nickles, Oklahoma
Senator Boren, Oklahoma
Eddie L. Tullis, Poarch Band of Creek Indians
James T. Martin, Poarch Band of Creek Indians

State of Wisconsin
Office of the Governor

Anthony S. Earl

May 30, 1986

Mr. William Houle, Chair
National Indian Gaming Task Force
Fond du Lac Chippewa Tribe
105 University Road
Cloquet, Minnesota 55720

Dear Mr. Houle:

This letter supports passage of HR 1920 regarding tribal government regulated gaming activities on reservations. I have expressed my support for this bill directly to Assistant Secretary Ross Swimmer earlier this year through my policy advisor Paul DeMain and feel it accurately reflects the concerns of the state of Wisconsin.

I do not favor the transfer of jurisdiction from tribes to the State for purposes of regulating Indian bingo. Wisconsin has 12 tribally-controlled bingo operations of which only one has an outside management contract. All are well regulated and have been positively analyzed by the Federal Bureau of Investigation without any indication of corruption or mismanagement. There is definitely no basis for allegations of infiltration by organized crime when it comes to high stakes Indian bingo in Wisconsin. I support the establishment of an Indian Gaming Commission to oversee the regulatory authority of these operations, conduct occasional audits based on a well-defined criteria, oversee outside management contracts and impose a short-term moratorium on establishment of other gaming activities to study the impacts and regulatory needs of tribal gaming activities.

Furthermore, I oppose further acquisition of off-reservation trust lands for purposes of Indian gaming activities, noting an exception for the Wisconsin Winnebago and St. Croix Chippewa tribes and their unique scattered land base.

I am very proud of the manner in which Wisconsin Indian tribes have conducted themselves responsibly on this issue. Having promulgated regulatory ordinances, employed tribal members, reduced unemployment on the reservation, entered into economic diversification programs and enhanced state/federal programs through gaming revenues, I believe the positive impact to tourism, jobs and program revenue generation far outweigh the occasional sensationalized fearmongering of state and federal representatives who have warned about "mafia infiltration."

Sincerely,

Anthony S. Earl
GOVERNOR

State Capitol
P.O. Box 7863
Madison, WI 53707-7863
608-266-1212

ESCAMBIA COUNTY ALABAMA
TAX COLLECTOR'S OFFICE
P O BOX 407
BREWTON, ALABAMA 36427
(205) 867-6261

BOB BONNER
TAX COLLECTOR

ATMORE 368-4753
FLOMATON 296-2008

June 12, 1986

Senator Mark Andrews, Chairman
Select Committee on Indian Affairs
838 Hart Building
United States Senate
Washington, D.C. 20510

Dear Senator Andrews:

On behalf of the Poarch Band of Creek Indians, I am writing this letter in support of House Bill 1920 and Senate Bill 902 to establish federal standards and regulations for the conduct of gaming activities on Indians reservations and lands.

The Poarch Band of Creek Indians opened the Creek Bingo Palace on April 13, 1985. This establishment has had a tremendous impact on the local economy of Escambia County Alabama and surrounding areas. The Creek Bingo Palace provides over one hundred jobs in our rural county. The overall impact on the local economy has been calculated at well over one million dollars this first year.

Through this Tribal Enterprise the Poarch Band of Creek Indians have been able to generate tribal governmental revenue that is essential to the development of the tribes economic and social self-sufficiency.

Thank you for giving favorable consideration to this bill.

Sincerely,

BOB BONNER
Tax Collector
Escambia County, AL

BB/wj

cc: Senator Nickles, Oklahoma
Senator Boren, Oklahoma
Eddie L. Tullis, Poarch Band of Creek Indians
James T. Martin, Poarch Band of Creek Indians

Martha Kirkland
Judge of Probate
ESCAMBIA COUNTY
P. O. Box 557
Brewton, Ala. 36427

[illegible] JUN 16 [illegible] 11: 23

June 13, 1986

Senator Mark Andrews, Chairman
Select Committee on Indian Affairs
838 Hart Building
United States Senate
Washington, D.C. 20510

Dear Senator Andrews:

On behalf of the Poarch Band of Creek Indians, I am writing this letter in support of the bills (H.R. 1920 S.902) to establish Federal standards and regulations for the conduct of gaming activities on Indians reservations and lands.

The Poarch Band of Creek Indians opened the Creek Bingo Palace on April 13, 1985. This establishment has had a tremendous impact on the local economy of Escambia County Alabama and surrounding areas. The Creek Bingo Palace provides over one hundred jobs in our rural county. The overall impact on the local economy has been calculated at well over on million dollars this first year.

Through this Tribal Enterprise the Poarch Band of Creek Indians have been able to generate tribal governmental revenue that is essential to the development of the tribes economic and social self-sufficiency.

Thank you for giving favorable consideration to this bill.

Sincerely,

Martha Kirkland
Martha Kirkland, Judge of Probate

SHERIFF'S DEPARTMENT
Escambia County Alabama
P. O. BOX 835 BREWTON, AL 36426

BREWTON — 867-6261
FLOMATON — 296-2006
ATMORE — 368-4753
ATMORE SUB-STATION
368-4779

TIMOTHY A. HAWSEY
SHERIFF

1986 JUN 17 AM 11:36

June 12, 1986

Senator Mark Andrews, Chairman
Select Committee on Indian Affairs
838 Hart Building
United States Senate
Washington, D. C. 20510

Dear Senator Andrews:

On behalf of the Poarch Band of Creek Indians, I am writing this letter in support of the bills (H.R.1920 S.902) to establish Federal standards and regulations for the conduct of gaming activities on Indians reservations and lands.

The Poarch Band of Creek Indians opened the Creek Bingo Palace on April 13, 1985. This establishment has had a tremendous impact on the local economy of Escambia County Alabama and surrounding areas. The Creek Bingo Palace provides over one hundred jobs in our rural county. The overall impact on the local economy has been calculated at well over one million dollars this first year.

Through this Tribal Enterprise the Poarch Band of Creek Indians have been able to generate tribal governmental revenue that is essential to the development of the tribes economic and social self-sufficiency.

Thank you for giving favorable consideration to this bill.

Sincerely,

Timothy A. Hawsey

Timothy A. Hawsey, Sheriff
Escambia County, Alabama

TAH:sep

cc: James T. Martin
Atmore, Alabama

1986 JUN 16 AM 11: 20

CIRCUIT COURT OF ESCAMBIA COUNTY
State of Alabama
Twenty-First Judicial Circuit

EARNEST RAY WHITE
Judge

Wanda Janes
Secretary

Courthouse
P O Box 1211
Brewton, AL 36427
Telephone 205-867-6261

June 12, 1986

Senator Mark Andrews, Chairman
Select Committee on Indian Affairs
838 Hart Building
United States Senate
Washington, D.C. 20510

Dear Senator Andrews:

I am writing to you on behalf of the Poarch Band of Creek Indians in reference to legislation to establish federal standards and regulations for the conduct of gaming activities on Indian reservations and lands. This is to express my support of House Bill 1920 and Senate Bill 902.

The Creek Bingo Palace is relatively new to our county as the Poarch Band of Creek Indians opened it on April 13, 1985. I must say that this establishment has had a tremendous impact on the local economy of our county and surrounding areas. The Bingo Palace has twelve full-time employees and 89 part-time employees with a payroll during the past 14 months of over one-half million dollars and a cost of operations of almost three quarters of a million dollars. These numbers clearly show some of the impact to the local economy that the Bingo Palace has had. Also the Poarch Band of Creek Indians has purchased $168,000 worth of automobiles for prizes and over $20,000 worth of door prizes from local businesses. The overall impact on the local economy has been calculated at well over one million dollars during the first year. It is a very sound operation.

The Poarch Band of Creek Indians have worked hard towards the development of the tribes economic and social self-sufficiency. Through the Bingo Palace, they have been able to generate tribal governmental revenue that is essential to this development.

This is to ask for your favorable consideration and support of this legislation as it is very important to the Poarch Band of Creek Indians and Escambia County, Alabama. If I can ever assist you in any manner, please do not hesitate to call.

very truly yours,

EARNEST RAY WHITE
Presiding Circuit Judge
Escambia County, AL

ERW/wj

cc: Senator Nickles, Oklahoma
Senator Boren, Oklahoma
Eddie L. Tullis,
Poarch Band of Creek Indians
James T. Martin,
Poarch Band of Creek Indians
Rt. 3, Box 243-A
Atmore, AL 36502

REPORT OF THE SPECIAL AD HOC COMMITTEE
TO STUDY LEGAL GAMBLING ON
INDIAN RESERVATIONS
IN MICHIGAN

MAY 1986

Representative Tom Alley, 105th District
Chairman

Representative Lewis Dodak, 86th District
Member

Representative Pat Gagliardi, 107th District
Member

Representative Rick Sitz, 29th District
Member

Representative Mickey Knight, 96th District
Member

Representative, James Middaugh, 45th District
Member

Representative Ernest Nash, 56th District
Member

Arnold Weinfeld, Committee Aide

INTRODUCTION

This is the final report of the Special Ad Hoc Committee to study legal gambling taking place on Indian reservations in the State of Michigan. The committee was formed in February of 1985 by Speaker of the House, Gary Owen and Representative Tom Alley of the 105th District was named chair of the committee. Other members of the committee include: Representatives Lewis Dodak, Pat Gagliardi, Rick Sitz, Mickey Knight, James Middaugh and Ernest Nash.

The purpose of the special committee was to gather information and to gain a better understanding of those on reservation gambling operations. As stated by Representative Alley, "Our purpose is not to interfere with the gambling procedures or the lifestyle of the Indian reservations, but as lawmakers, we should find out how gambling on these reservations may affect the surrounding communities and keep the public informed as to what is taking place."

"We do not intend to pass judgement on the use of gambling as a means of raising revenue, but there is concern regarding such issues as whether communities are financially benefiting from legal gambling, and whether the localities are able to handle the influx of people the industry would attract to the area," Alley said.[1]

During the course of the past year, much information has been obtained and scrutinized regarding the status of gambling on Indian reservations in Michigan and other areas of the United States.

Basically, if certain gaming activities are legal that is, permitted and regulated anywhere in a state, it is legal and permitted on any reservation within that state, subject then only to tribal law and national regulation of tribal activities. In Michigan, Bingo games and Las Vegas nights are legal and are therefore allowable on Indian Reservations. However, unlike organizations in the State who must conform to state law regarding prize and jackpot limits, Indian Reservations do not have to abide by these same laws as they are independent jurisdictions within the state.

Before the formation of this committee and during its existence, a landmark case concerning a Michigan tribe was decided upon in the United States District Court in Grand Rapids which could lead to a change for reservations.

The case involved the gambling operations of the Keweenaw Bay Indian Community in Baraga and its chief operator, Mr. Fred Dakota. United States Attorney, Mr. Daniel LaVille charged that commercial casino gambling on federal Indian reservations located within the State of Michigan was a violation of federal law under the Assimilative Crimes Act and the Organized Crimes Control Act. In July of 1985, Judge Wendell Miles agreed with the claim of Mr. LaVille and enjoined Mr. Dakota from continuing to operate a commercial gambling business.[2] Since that time the United States Attorney has also filed suit against other tribes which operate gambling businesses.

It is important to note that the reservations involved operate(d) casino type gambling games. These activities include black jack, craps and big wheel games. As of this date, no action has been taken against any tribe or reservation operating bingo games.

Therefore, it appears that a concerted effort is underway by the federal government to regulate the operations of gaming activities on Indian Reservations.

It is necessary to understand why many Indian tribes, not only in Michigan but throughout the United States, have turned to gambling as a business opportunity.

The issue is money. Cutbacks in social programs, which Indian tribes have heavily relied upon, have been the motivation for starting the games. Presently, there are some sixty tribes in twenty states that use gambling as a means of reducing dependence on these social welfare programs.

Bingo games appear to be quite lucrative. In a hearing of the Special Committee held on September 24, 1985, Josephine Jackson of the Saginaw Chippewa Tribe noted that the biggest "take" for a single game had been $15,000.[3] The Saginaw Tribe is only involved in bingo and is where the highest bingo prizes are offered.

However, as was noted by Ms. Jackson and several other witnesses, bingo games offered by tribes have not interfered with other charitable bingo games offered in local communities. There has been no significant problems or adverse affect on games offered by charitable organizations such as church groups.

Ms. Jackson also noted that only tribal members are employed and no outside management company is involved.[4] This is important to note, for in his report entitled "Reservations About Bingo," Dr. William Thompson of the University of Nevada-Las Vegas noted that several problems had arisen with the use of outside management companies or non-tribal members.[5] In particular was a case involving the Cabazon Tribe of California who had used a "well-known bookmaker" in the running of its casino. This was especially highlighted in a television news report done by ABC-TV and Geraldo Rivera which aired April 4, 1985.

To date, gaming in Michigan is tribally controlled. In a recent letter to the Committee from Mr. William L. Church, Executive Director of the Michigan Commission on Indian Affairs, he states that "None of the organizations engage in, tolerate or provide for any outside management."[6]

In the committee meeting of September 24, 1985 many different tribal leaders from Michigan noted how the use of gambling, whether it be bingo or cards, has had a most positive impact on their reservations.

The building of community centers, schools and medical centers makes it clear that the profits gained by the tribes from the use of gambling has had a favorable impact on their communities. While it is apparent that in some instances across the nation, abuses have occured, it is also apparent that with the continuing federal budget crisis and the cutting of social programs of vital importance to the Indians, the use of gambling operations cannot be discounted as a viable alternative.

In Michigan each of the six federally recognized tribes operate bingo operations. The tribes are:

The Grand Traverse Band of
Ottawa/Chippewa Indians
Suttons Bay MI

Sault Ste. Marie Tribe of
Chippewa Indians
Sault Ste. Marie, MI

Isabella Chippewa Tribe
Mt. Pleasant, MI

Keweenaw Bay Chippewa Tribe
Keweenaw Bay (Baraga), MI

Bay Mills Chippewa Tribe
Brimley, MI

Hannahville Potawatomi Tribe
Wilson, MI

According to Mr. Church, "Each of these operations is developed and managed internally. No funding or support of these operations is provided by anyone other than the tribes themselves with the exception of building construction loans, provided by local banking institutions located near reservations."[7]

Bingo is the predominant form of gaming by tribes. Casino games such as blackjack are provided at Suttons Bay, Sault Ste. Marie and Brimley.

The future of gambling activities on Indian Reservations is now in the hands of the federal government. Recently, Marian Horn, principal deputy solicitor in the Department of the Interior, testifying before the House Interior and Insular Affairs Committee reported that the Interior would soon be submitting a draft bill as an alternative to the bills now being considered in Congress. Principal elements of this bill would be: 1) Bingo would not be subject to state regulation, but would be regulated by a commission appointed by the Secretary of the Interior, and 2) All other forms of gambling would be subject to state regulation. As Ms. Horn said, "It is our desire to retain the recognition of tribal sovereignty, to preserve bingo as an economic activity avaiable for the tribes, to assure protection of the general populace from undesireable impacts of additional gambling and to resolve the uncertainty as to the legality of gambling on Indian land."[8]

As stated previously, it is now apparent in the wake of the Dakota court decision and the recent Department of Interior proposal, that the federal government is attempting to put regulations on gambling at Indian reservations. It is hoped that a new spirit of cooperation between the federal government and Indian tribes nationwide will develop and pave the way to economic independence for the Indians tribes in Michigan and the rest of the nation.

CONCLUSION

In conclusion the committee has learned how the advent of gambling activities on Indian Reservations in Michigan has led tribes to become more self sufficient and less dependent on the federal government for assistance.

Gambling activities have led to a marked increase in employment on the reservations and the monies earned have gone to such programs as alcohol and drug rehabilitation centers, medical centers, community buildings, homes and schools.

As stated previously it was not this committee's intent to pass judgement on the use of gambling as a means of raising revenue. The committee's concern centered around whether the tribes and communities surrounding them are financially benefiting from legal gambling.

The findings of the committee support the conclusion that the use of gambling on Indian Reservations in Michigan has led to financial benefits for those reservations as well as to surrounding communities.

Respectfully Submitted,

Tom Alley
Rep. Tom Alley, Chairman

Lewis H Dodak
Rep. Lewis Dodak

Pat Gagliardi
Rep. Pat Gagliardi

Rick Sitz
Rep. Rick Sitz

Mickey Knight
Rep. Mickey Knight

James Middaugh
Rep. James Middaugh

Ernest W. Nash
Rep. Ernest Nash

FOOTNOTES

1. Representative Tom Alley. Press Release, March 1, 1985

2. Judge Wendell Miles. Opinion and Judgement. United States of America v. Frederick and Sybil Dakota, and Keweenaw Bay Indian Community. June 28, 1985

3. Special Ad Hoc Committee on Indian Gambling. Meeting of September 24, 1985.

4. Ibid.

5. Dr. William Thompson, Ph.D., Associate Professor, University of Nevada, Las Vegas. Reservations About Bingo, March 1984.

6. Mr. William Church, Executive Director, Michigan Commission on Indian Affairs. March 13, 1986.

7. Ibid.

8. Marian Horn, Principal Deputy Solicitor, Department of Interior. Testimony before House Interior and Insular Affairs Committee.

DICKSTEIN, SHAPIRO & MORIN
2101 L STREET N W
WASHINGTON D C 20037
202 785 9700
TELEX 892608 DSM WSH

ANDREW P. MILLER
DIRECT DIAL
202 828 2216

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[illegible]
[illegible]

July 1, 1986

The Honorable Mark Andrews, Chairman
Select Committee on Indian Affairs
United States Senate
838 Hart Senate Office Building
Washington, D.C. 20510

Dear Chairman Andrews:

I appreciated the opportunity to express the views of this firm's client, the American Greyhound Track Operators Association (AGTOA), on the regulation of gambling on Indian lands before the Select Committee on Indian Affairs on June 17.

To eliminate any confusion which may exist in your Committee as to AGTOA's position on the regulation of such gambling, I attach a copy of my testimony before the House Committee on Interior and Insular Affairs on June 25, 1985. As you will note from that testimony at page 3, AGTOA did not oppose gambling on Indian reservations before the House. It does not do so now. AGTOA does believe, however, that the same strict regulatory standards should be applied by the States to both Indian and non-Indian gambling within their respective borders. This has always been and will continue to be AGTOA's message to the Congress.

During the June 17 hearing Senator DeConcini referred to an article, appearing in the June edition of the National Greyhound Update, which he did not offer for my review and of which I had no prior knowledge. He asserted that the magazine he referenced is published by AGTOA. This assertion is false. The publisher is the Raynham Greyhound Racetrack in Raynham, Massachusetts. Senator DeConcini then stated that my testimony did not accurately reflect AGTOA's position on the issue of gambling on Indian lands. This statement is also false.

The article Senator DeConcini mentioned credited AGTOA with masterminding adoption by the House of H.R. 1920. As you know this bill includes a moratorium on high-stakes gaming on Indian lands for four years which is not what AGTOA sought.

As passed by the House on April 21, 1986, H.R. 1920 represented a compromise reluctantly agreed to by the parties in interest. AGTOA supported its passage only when it became clear that the choice was between a bill with moratorium language and no bill at all. At no time during negotiations on H.R. 1920 did AGTOA change its position of supporting gambling on Indian lands but under the same strict State control as gambling off Indian lands.

AGTOA accepted the H.R. 1920 compromise only after it became apparent that the legislation would not be put to a vote in any other form. Instead of a moratorium AGTOA continues to advocate a resolution of the regulatory issue with respect to Indian gambling in accordance with its stated position. As I stated in my prepared testimony before your Committee, "[t]he controversy cries out for a legislative solution this year," *i.e.*, before the 99th Congress adjourns. There is absolutely no need for the Comptroller General to engage in the study proposed by H.R. 1920.

On behalf of AGTOA, I applaud your interest in resolving this important matter rather than in further postponing a decision on the merits, the position taken by the House. I look forward to working with you as S. 2557 moves forward to passage in the Senate. To this end, I respectfully request that this letter be included as part of the official hearing record.

Sincerely yours,

DICKSTEIN, SHAPIRO & MORIN

By Andrew P. Miller
Andrew P. Miller

APM:sz
Attachment

cc: The Honorable Dennis DeConcini

[House testimony retained in committee files]

LAW OFFICES OF
KENT P. TUPPER
SUITE 324 WEST
PARKDALE PLAZA
1600 SOUTH HIGHWAY 100
MINNEAPOLIS, MN 55416

KENT P. TUPPER
ATTY I.D. NO. [illegible]

OF COUNSEL
BERNARD P. BECKER

TELEPHONE
(612) 544-5154

1986 JUL 15 PM 4: 5

July 8, 1986

Senator Mark Andrews, Chairman
Select Committee on Indian Affairs
United States Senate
1838 Hart Building
Washington, D.C. 20510

RE: S. 902 - H.R. 1920 - Indian Gaming Control Act

Dear Senator Andrews:

I'm submitting this letter to be included as written testimony as part of the hearings the Select Committee on Indian Affairs is holding regarding S. 902 (Indian Gaming Control Act).

I am legal counsel for the Minnesota Chippewa Tribe, consisting of the Bois Forte Band, Grand Portage Band, White Earth Band, Leech Lake Band, Fond Du Lac Band, and Mille Lacs Band of Chippewas.

I was the first Directing Attorney for the O.E.O. funded Leech Lake Reservation Legal Services project in the years 1967-1969. Since 1969 I have been in private practice and have represented the Minnesota Chippewa Tribe and various of its constituent bands in a wide variety of legal matters in both federal and state courts. We have litigated such issues as hunting and fishing rights, state taxation and civil regulation of tribal members and property, sovereign immunities, among other issues involving jurisdiction on the Chippewa Reservations in Minnesota.

As a direct result of favorable court decisions upholding treaty protected rights and rights of self-government, the Minnnesota Chippewa Tribe and the State of Minnesota have agreed to sit down on a government to government level and negotiate agreements on many areas of mutual concern. Minnesota Statute 97.431, et seq. authorizes a settlement of Leech Lake and White Earth Band hunting and fishing disputes by agreements to not commercialize by the Bands, in exchange for payments by the State on an annual basis out of State revenues.

Minnesota Statute 270.60 authorizes the State to enter into agreements with the Minnesota tribes regarding refundment of State Sales and Excise taxes to the Bands for taxes paid the state by individual tribal members.

The State of Minnesota considered a bill to authorize casino gambling in Ely, Minnesota in 1984. The Governor of Minnesota had a concern that the various Indian tribes in the state might then elect to open their own gambling casinos if State criminal law no longer prohibited casino gambling. He proposed an agreement with the Minnesota tribes whereby they would not open gambling casinos and in exchange the State of Minnesota would share a part of the revenue the state received from the Ely, Minnesota casino, with the tribes. The Minnesota tribes entered into the agreement with the state. The proposed legislation did not pass but this was another example of the cooperation and good relationship the tribes have with State Government in Minnesota.

The Minnesota Chippewa Bands have had many promoters and opportunists present every conceivable scheme to them over the past 20 years. They usually involve the tribes investing claims money in some economically stricken business or in some undercapitalized fledgling business. The location in Northern Minnesota of the Chippewa reservations has not made them attractive areas for private investment or for the relocation of viable existing businesses.

The Minnesota Chippewa Bands have watched the development of gaming activities on other reservations since the federal court decisions in *Seminole Tribe of Florida v. Butterworth*, 491 F. Supp. 1015 (S.D. Fla. 1980) 658 F. 2d. 310 (5th Cir. 1981); *Oneida Tribe v. State of Wisconsin*, 518 F. Supp. 712 (W.D. Wisc. 1981). Minnesota like Florida and Wisconsin does not prohibit bingo, pull tabs, pari-mutuel betting on horseracing, as well as certain other types of gaming activities.

The Minnesota tribes observed the financial success of bingo and other gambing activities on reservations around the country. The court decisions had upheld the lack of state civil regulatory jurisdiction over gaming activities on reservations where public policy did not prohibit it. The tribes elected to commence construction and operation of their own gaming facilities (mostly bingo and pull tabs).

None of the Minnesota Chippewa Bands have entered into management contracts or licensed non-Indian operators. Some of the Bands are in the process of contruction of new large facilities such as those of the Bois Forte Band, Fond Du Lac Band and White Earth Band. It has always been difficult to obtain private financing for projects of any kind on reservations because of the trust status of land and the complexity of court jurisdiction on reservations over Indians and non-Indians. The lack of a successful record of many Indian owned businesses is also a large factor in the negative response of the private sector in Indian financing.

The success of Indian bingo and gaming facilities has somewhat changed the attitude of private lending institutions.

Most tribes recognize the importance of not losing their valuable revenues from Indian gaming facilities in these times of budget cuts in federal programs. They see gaming revenues as one excellent source of tribal income to assist them in becoming self sufficient. They see the need of federal legislation to guarantee that their control and operation of gaming facilities on their reservations is not now lost thru adverse court decisions. The Minnesota Chippewa Tribe has supported H.R. 1920 as a reasonable compromise between Indian vs. State control of gaming in States that as a matter of public policy do not prohibit gaming activites.

The Bois Forte Band of Chippewas commenced construction of a gaming complex at its' Lake Vermillion Reservation in economically depressed Northeast Minnesota. The cost will exceed 5½ Million Dollars ($5,500,000.00). The project constuction was commenced in July of 1985. The project will offer a bingo facility, pull tabs and simulcasting of horseracing and pari-mutuel betting on the horseraces. This project will employ over 200 people and it is widely supported by Indians and non-Indians alike. It has also received financial assistance from the State of Minnesota.

The Bois Forte Reservation currently has approximately 89% unemployment. One hundred twenty persons have already been hired to start work when the facility is completed around August 1, 1986. Eighty of the persons hired are Indian and I'm told 15 of them were A.F.D.C. mothers. This project will have a positive impact for the whole area, Indian and non-Indian alike. Non-Indians have commenced discussion of plans for development of other facilities to complement the Bois Forte Complex, such as motels and resturants.

Minnesota enacted legislation that authorized horseracing and pari-mutuel betting and has licensed one race track.

The Bois Forte Band is currently negotiating with the only race track licensed in Minnesota to receive a simulcast of its races.

The problem that now confronts the Bois Forte Band is that H.R. 1920 provides in Section 3 (c) (1) and (2) that Class III gaming shall be unlawful on any Indian lands on the date of the enactment of this act but (2) provides any Class III gaming, which would include simulcasts with pari-mutuel betting, would be legal if operated on Indian lands as of January 1, 1986, if otherwise legal under existing law.

The Bois Forte Band in 1984 enacted an ordinance and issued a license for the simulcasting of races and pari-mutuel betting on them and the construction of their facility was commenced before H.R. 1920 was passed and prior to January 1, 1986.

The Governor of Minnesota has given support to this project. It is also supported in Northeast Minnesota by the non-Indian population. The simulcast of the horseraces with pari-mutuel betting is as important to the economic success of this project as is the bingo. There are future economic development plans to add a 200 room hotel, a marina and campground making it a real tourist destination.

The Bois Forte Band supports legislation such as H.R. 1920 but urges that Class III gaming not be limited to those facilities in operation on January 1, 1986 but also include those under construction where the tribe or Band has by an ordinance authorized a Class III gaming activity and licensed it prior to January 1, 1986.

Respectfully submitted.

Kent P Tupper
Kent P. Tupper

KPT/ktb

13. Criminal prosecution

Chippewa Indian living on allotment cannot be punished by state for taking muskrat thereon in violation of state laws. State v. Cloud, 1930, 179 Minn. 180, 228 N.W. 611.

The provision that bullheads or other fish mentioned in St.1927, § 5574 might be possessed without limit and might be bought and sold in any quantity at any time referred only to fish lawfully taken in manner provided, fish taken in licensed commercial fishing operations and fish lawfully taken from waters specified in § 5594-1, but parties taking bullheads other than as specified might be prosecuted for unlawfully taking bullheads when season for taking them was closed. Op.Atty. Gen., 211-C-2, March 26, 1932.

Parties who take bullheads other than as specified by statute may be prosecuted for unlawfully taking bullheads when season for taking them is closed, and if as direct proof that they took the fish is lacking, they may be prosecuted for having the fish in their possession. Op. Atty.Gen., 208-G-14, March 26, 1932.

97.431 Indian reservations; special provisions relating to hunting, fishing, trapping and wild ricing rights of Indians

Subdivision 1. Purpose. The purpose of this section is to give recognition and effect to the rights of the Leech Lake Band of Chippewa Indians which are preserved by federal treaty and which relate to hunting, fishing, and trapping, and to the gathering of wild rice on the Leech Lake Indian reservation. These rights have been recognized and given effect by the decision of the United States District Court in the following entitled actions: Leech Lake Band of Chippewa Indians, et al. v. Robert L. Herbst, No. 3-69 Civ. 65[1]; and United States of America v. State of Minnesota, No. 3-70 Civ. 228. The state of Minnesota desires to settle all outstanding issues and claims relating to the above rights.

Subd. 2. Definitions. For the purposes of this section the following terms have the meanings given them:

(a) "Band" means the Leech Lake Band of Chippewa Indians;

(b) "Committee" means the reservation business committee of the Leech Lake Band of Chippewa Indians;

(c) "Reservation" means the Leech Lake Indian reservation as described in the settlement agreement;

(d) "Settlement agreement" means the document entitled "Agreement and Settlement" on file and of record in the United States District Court for the District of Minnesota, Third Division, in the following entitled actions: Leech Lake Band of Chippewa Indians, et al. v. Robert L. Herbst, No. 3-69 Civ. 65; and United States of America v. State of Minnesota, No.3-70 Civ. 228.

Notes of Decisions

11. Taking or hunting

Legislature's delegation of authority to Commissioner of Natural Resources to extend protection to any species of wild animal and Commissioner's promulgation of order requiring antlerless deer permit for permit area in which antlerless deer is taken, violation of which order was a misdemeanor, established reasonably clear standard of action to guide Commissioner's exercise of discretion. State v. Suter, App.1984, 346 N.W.2d 372.

97.431. Indian reservations; special provisions relating to hunting, fishing, trapping and wild ricing rights of Indians

[See main volume for text of subds. 1 to 3]

Subd. 4. Commissioner's powers and duties. Notwithstanding the provisions of any other law to the contrary, the commissioner of natural resources, on behalf of the state of Minnesota, shall take all actions, by order or otherwise, which are necessary to carry out the duties and obligations of the state of Minnesota arising from the agreement entered into by the parties to the settlement agreement. These actions include but are not limited to the following:

(a) The implementation of the exemption of members of the band and other members of the Minnesota Chippewa tribe from state laws relating to hunting, fishing, trapping, the taking of minnows and other bait, and the gathering of wild rice while within the reservation, together with exemption from related possession and transportation laws, to the extent necessary to effectuate the terms of the settlement agreement;

(b) The establishment of a system of special licenses and related license fees for persons who are not members of the Minnesota Chippewa tribe for the privilege of hunting, fishing, trapping, or taking minnows and other bait, within the reservation. All money collected by the commissioner for special licenses shall be deposited in the state treasury and credited to the Leech Lake Band and White Earth Band special license account, which is hereby created. All money in the state treasury credited to the Leech Lake Band and White Earth Band special license account, less any deductions for administrative costs authorized by the terms of the settlement agreement, is appropriated to the commissioner who shall remit the money to the committee pursuant to the terms of the settlement agreement;

(c) To the extent necessary to effectuate the terms of the settlement agreement, the promulgation of regulations for the harvesting of wild rice within the reservation by non-Indians;

(d) To the extent necessary to effectuate the terms of the settlement agreement, the establishment of policies and procedures for the enforcement by conservation officers of the conservation code adopted by the band; and

(e) The arbitration of disputes arising under the terms of the settlement agreement.

Amended by Laws 1980, c. 614, § 81, eff. July 1, 1980.

Law Review Commentaries

Legislative settlement of Indian treaty rights. 1978, 62 Minn. Law Review 1222.

United States Supreme Court

State jurisdiction over Indian tribe, individual members of tribe, see Puyallup Tribe, Inc. v. Department of Game of State of Washington, 1977, 97 S.Ct. 2616, 433 U.S. 165, 53 L.Ed.2d 667.

Notes of Decisions

In general 2

1. Validity

This section requiring all persons who are not members of Minnesota Chippewa Tribe to pay special licensing fee for privilege of fishing within Leech Lake Reservation is not unconstitutional denial of equal protection to non-Indians, nor is it in violation of state constitutional prohibition against special legislation, since it is rational compromise between unextinguished treaty fishing rights held by tribe and legitimate interests of state in regulating fishing for benefit of all citizens. State v. Forge, 1977, 262 N.W.2d 341, appeal dismissed 98 S.Ct. 1479, 435 U.S. 919, 55 L.Ed.2d 512.

This section permitting reservation business committee of Minnesota Chippewa Indians to set special licensing fee required of all persons not members of Minnesota Chippewa Tribe for privilege of fishing within Leech Lake Reservation, not to exceed 50 percent of state resident fishing license fee, is not unconstitutional delegation of legislative power. Id.

Statutes passed for benefit of dependent Indian tribes or communities are to be liberally construed, doubtful expressions being resolved in favor of Indians, since treaties and statutes are not grant of rights to Indians, but grant of rights from them. Id.

2. In general

The Nelson Act did not disestablish the White Earth Indian Reservation, and thus State's jurisdiction to regulate Indian activities within boundaries of that reservation was limited by statute providing that State's jurisdiction did not extend to "deprive any Indian or any Indian tribe * * * of any right, privilege or immunity afforded under Federal treaty agreement or statute with respect to hunting, trapping or fishing or the control, licensing or regulation thereof." State v. Clark, 1979, 282 N.W.2d 902, certiorari denied 100 S.Ct. 1080, certiorari denied 100 S.Ct. 1080, 445 U.S. 904, 63 L.Ed.2d 320.

97.432. Amendment to Leech Lake settlement agreement

The commissioner may enter into an agreement with the reservation business committee of the Leech Lake Indian Reservation to amend the settlement agreement adopted in section 97.431 by providing that in lieu of collecting any additional fee in connection with the state waterfowl stamp for the privilege of hunting waterfowl on the Leech Lake Indian Reservation an amount equal to five percent of the proceeds from the sale of said stamp shall be credited to the Leech Lake Band and White Earth Band special license account established by section 97.431 and shall be remitted to the Leech Lake reservation business committee in the manner and subject to the terms and conditions provided in section 97.431.

Laws 1977, c. 317, § 2, eff. May 28, 1977. Amended by Laws 1980, c. 614, § 82, eff. July 1, 1980.

97.433. Agreements with the Leech Lake and White Earth Bands of Chippewa Indians relating to hunting and fishing licenses and fees

Subdivision 1. Agreement with the White Earth Band of Chippewa Indians. The commissioner may enter into an agreement with authorized representatives of the White Earth Band of Chippewa Indians on substantially the same terms as the agreement adopted by section 97.431 and amended pursuant to section 97.432; except that in lieu of the system described in section 97.431, subdivision 4, clause (b), of special licenses and related license fees for persons who are not members of the Minnesota Chippewa tribe, for the privilege of hunting, fishing, trapping, or taking minnows and other bait within the reservation, the agreement shall provide that an amount equal to 2-1/2 percent of the proceeds from the sale of all licenses sold in the state of Minnesota for hunting, fishing, trapping, or taking of minnows or other bait shall be credited to the special license account established by section 97.431, and shall be remitted to the White Earth Band in the manner and subject to the terms and conditions that may be mutually agreed upon. An agreement negotiated pursuant to this subdivision shall be for a term of at least four years following the date of its execution.

Subd. 2. Amendment to the Leech Lake settlement agreement. The commissioner may enter into an agreement with authorized representatives of the Leech Lake Band of Chippewa Indians to amend the settlement agreement adopted by section 97.431 and previously amended pursuant to section 97.432 by providing that in lieu of the system of special licenses and license fees for persons who are not members of the Minnesota Chippewa tribe for the privilege of hunting, fishing, trapping, or taking minnows and other bait within the reservation, an amount equal to five percent of the proceeds from the sale of all licenses sold in the state of Minnesota for hunting, fishing, trapping, or taking minnows and other bait shall be credited to the special license account established by section 97.431 and shall be remitted to the Leech Lake Band in the manner and subject to the terms and conditions that may be mutually agreed upon.

Subd. 3. Source of payments. Money to make payments to the Leech Lake Band and White Earth Band special license account pursuant to sections 97.431, subdivision 4, and

97.432, is annually appropriated for that purpose in a ratio of 60 percent from the game and fish fund and 40 percent from the general fund.

Laws 1980, c. 614, § 83, eff. July 1, 1980. Amended by Laws 1984, c. 655, art. 1, § 16.

1984 Amendment. Laws 1984, c. 655 was a revisor's bill, which by its title purported to correct erroneous references, eliminate redundant and superseded provisions, reenact certain laws, and correct 1984 session legislation. The Act deleted reference to § 94.16 and inserted reference to § 97.432 in subd. 3.

Library References

Indians ⇐3, 6.

C.J.S. Indians §§ 20 et seq., 24 et seq.

97.45. Transportation restricted

Subdivision 1. No person shall transport any wild animals taken, bought, sold or possessed in violation of chapters 97 to 102. When transported, any wild animals, or any package, container, or receptacle in which they are contained, shall be tagged, sealed, or otherwise marked and identified as prescribed by law or commissioner's order. A licensed resident may transport during any one open season and the next following two days, or at any time thereafter under conditions which the commissioner may prescribe by order, one deer, one bear, and one moose which have been lawfully taken and possessed.

[See main volume for text of subd. 2]

Subd. 3. A licensed resident who accompanies the shipment may transport wild animals lawfully taken and possessed, including undressed game birds and dressed or undressed fish, to any place in the state in any vehicle or as baggage on a common carrier. A licensed resident who accompanies the shipment may transport the head or hide of a deer, bear, or moose, lawfully taken and possessed, to any place within or outside the state for the purpose of mounting or tanning. A common carrier may transport wild animals as baggage as provided in this subdivision when accompanied by the licensed resident shipper except an employee of the common carrier while engaged in the performance of his duties.

Subd. 4. A licensed resident who does not accompany the shipment may transport by common carrier to any point in the state, consigned to himself only, the following wild animals lawfully taken and possessed: (a) not more than three separate shipments of undressed birds, each of which shipment may contain the number of birds which could lawfully be taken within the state on any single day, but not more than a single day's limit of any species; (b) big game animals as prescribed in subdivision 1. The licensed resident may transport the head or hide of the deer, bear, or moose to a place within or outside the state for the purpose of mounting or tanning; and (c) dressed or undressed fish.

Subd. 4a. A big game animal which has been registered by the licensee in accordance with requirements established by the commissioner may be transported by the most direct route from one location to another by a person other than the licensee provided there is a tag attached to the animal marked in ink containing the address, license number, and signature of the licensee, and the locations from which and to which the animal is being transported.

Subd. 5. Repealed by Laws 1984, c. 621, § 15, eff. May 3, 1984.

Subd. 6. (1) A licensed nonresident who does not accompany the shipment may transport by common carrier to a place within or outside this state one shipment of fish lawfully taken and possessed in any one licensing year upon obtaining a shipping permit from the commissioner or his agent. The shipment may contain: (a) not more than 25 pounds of undressed fish; (b) one undressed fish of any size; or (c) not more than 15 pounds of filleted or dressed game fish. A shipping permit shall be issued upon request and without payment of a fee, and shall be cancelled as prescribed by the commissioner could have made plans accordingly. City of Chanhassen v. Carver County, App.1985, 369 N.W.2d 297.

City which chose not to negotiate contract with county to pay for costs of assessment services provided by county and chose not to pay county's initial bill was subject to levy for actual costs incurred. City of Chanhassen v. Carver County, App.1985, 369 N.W.2d 297.

Levy imposed by county auditor upon city to pay for costs of assessment services could be included in city's levy limitation. City of Chanhassen v. Carver County, App.1985, 369 N.W.2d 297.

270.53. Existing contracts for assessment of property

Sections 270.41 to 270.53 shall not supersede existing contracts executed pursuant to Minnesota Statutes, Section 273.072 or 471.59 except to the extent that such contracts may conflict with section 270.49 or 270.50 nor preclude contracts between a taxing district and the county for the assessment of property by the county assessor.

Laws 1971, Ex.Sess., c. 31, art. 25, § 13.

Laws 1971, Ex.Sess., chapter 31, was the 1971 "tax law", approved by the governor upon October 30, 1971. Article 38 of that law stated: "Except as otherwise provided for in the provisions of this act, this act is in effect from and after its final enactment."

270.60. Tax refund agreements with Indians

The commissioner of revenue is authorized to enter into a tax refund agreement with the governing body of any Sioux or Chippewa reservation in Minnesota. The agreement may provide for a mutually agreed upon amount as a refund to the governing body of any sales or excise tax paid by the Indian residents of a reservation into the state treasury, or for an amount which measures the economic value of an agreement by the council to pay the equivalent of the state sales tax on items included in the sales tax base but exempt on the reservation, notwithstanding any other law which limits the refundment of taxes.

There is annually appropriated from the general fund to the commissioner of revenue the amounts necessary to make the refunds provided in this section.

Laws 1977, c. 203, § 9, eff. May 21, 1977. Amended by Laws 1983, c. 342, art. 6, § 1, eff. June 15, 1983.

1983 Amendment. Laws 1983, c. 342, art. 6, § 1, effective June 15, 1983, revised the section which previously provided:

"The commissioner of revenue is authorized to enter into a tax refund agreement with the governing body of any Sioux or Chippewa reservation in Minnesota. The agreement may provide for a mutually agreed upon amount as a refund to the governing body of any sales or excise tax paid by the Indian residents of a reservation into the state treasury after June 14, 1976, notwithstanding any other law which limits the refundment of taxes.

"There is annually appropriated from the general fund to the commissioner of revenue the amounts necessary to make the refunds provided in this section."

Library References

Taxation ⇐535.

C.J.S. Taxation §§ 631 et seq., 1077, 1087.

United States Supreme Court

State jurisdiction over Indian tribe, individual members of tribe, see Puyallup Tribe, Inc. v. Department of Game of State of Washington, 1977, 97 S.Ct. 2616, 433 U.S. 165, 53 L.Ed.2d 667.

270.65. Date of assessment; definition

For purposes of chapters 270, 290, 296, and 297A, the term "date of assessment" means the date a return was filed or the date a return should have been filed, whichever is later; or, in the case of taxes determined by the commissioner, "date of assessment" means the date of the order assessing taxes; or, in the case of an amended return filed by the taxpayer, the assessment date is the date the return was filed with the commissioner.

Laws 1985, c. 101, § 2, eff. May 11, 1985.

STATE OF MINNESOTA
OFFICE OF THE GOVERNOR
ST. PAUL 55155

RUDY PERPICH
GOVERNOR

JUL 8 1986

June 26, 1986

William J. Houle
Chairman
Fond du Lac Reservation
105 University Road
Cloquet, Minnesota 55720

Dear Bill:

On behalf of the State of Minnesota let me take this time to thank you and the people of Fond du Lac for taking the lead to seek a solution to the growing concern about gaming on Indian reservations.

We recognize that there are numerous benefits coming to the tribes here in Minnesota through gaming activities that are occuring on the reservations. These benefits enhance a tribes ability to assume its rightful place as legitimate governing bodies while at the same time providing for employment and other economic development opportunities.

The concerns that the State of Minnesota have are addressed in H.R. 1920 and I therefore concur in the National Indian Gaming Associations' support for its passage. I urge your continued role nationally on this issue.

Sincerely,

Rudy Perpich

RUDY PERPICH
Governor

AN EQUAL OPPORTUNITY EMPLOYER

OFFICERS
DISTRICT REPRESENTATIVES
ADVISORY COUNCIL
LEGAL COUNSEL

RED LAKE BAND OF CHIPPEWA INDIANS

UPPER RED LAKE
LOWER RED LAKE

RESOLUTION NO. 70-84

Opposing H.R. 4566 entitled "A Bill to establish Federal standards and regulations for the conduct of gambling activities within Indian Country, and for other purposes".

WHEREAS, in January, 1983, the President of the United States issued a document entitled "The President's Indian Policy of 1983" which recognized the inherent sovereignty of Indian Tribes and declared there will be a recognition of a government-to-government federal/tribal relationship, and;

WHEREAS, the United States Federal Courts have held that Indian Tribes have the exclusive right to regulate gambling activity which is not prohibited by Federal or State law in Indian Country, and;

WHEREAS, a principal goal of Federal Indian policy is to promote tribal economic development, tribal self-sufficiency, and strong tribal governments, and;

WHEREAS, Tribal operation and licensing of gambling activities is a legitimate means of generating revenues for tribal government operations and economic development programs, and;

WHEREAS, Indian Tribes have been successful in their operation and licensing of gambling activities in Indian Country, under tribal Ordinances and Regulations adopted by the Indian Tribal Governing Body, and;

WHEREAS, there is ample provision under existing Federal Law, which requires the licensing of outsiders who trade with Indians, by the Secretary of Interior, which if properly applied by the Secretary of Interior, would insure the orderly conduct of gambling activities within Indian Country, free from the influence of organized crime, racketeers, professional gamblers, and those who would defraud or otherwise attempt to exert corrupt influence upon the Indians, and;

OFFICERS
Roger A. Jourdain, Chairman
Royce Graves Sr., Secretary
James Strong, Treasurer
DISTRICT REPRESENTATIVES
Dan Raincloud Jr.
Anthony Wilson
Gerald F. Jones
Adolph Barrett
[illegible]
Rowan P. Stately Jr.
Lawrence Bedeau
Allen English Jr.
ADVISORY COUNCIL
7 Hereditary Chiefs
LEGAL COUNSEL
Edwards, Edwards, Bodin
Duluth, Minnesota

RED LAKE BAND OF CHIPPEWA INDIANS
Phone 218 679-3341
Red Lake, Minnesota 56671

UPPER RED LAKE
LOWER RED LAKE

Res. No. 70-84
Page two

WHEREAS, the Secretary of Interior has consistently failed to perform the trust responsibilities of his office in respect to the management of the Red Lake trust properties and tribal trust fund accounts so that the Red Lake Tribal Sawmill, which by the Act of 1916 was placed under the management and supervision of the Secretary of Interior, is now bankrupt and the Secretary of Interior has been unable to furnish the Red Lake Band with an accounting of his operations of the sawmill, and has also been unable to furnish the Red Lake Band with an accounting of the tribal trust funds administered by the Secretary of Interior, and;

WHEREAS, there are now pending, at the unneccesary cost of the Red Lake Band, three separate lawsuits against the United States and Secretary of Interior involving the mismanagement by the Secretary of Interior of tribal trust properties and his failure to furnish accountings to the Red Lake Band of his trust administration of tribal trust funds, and;

WHEREAS, the Red Lake Band through it's tribal governing body has successfully managed tribal enterprises and tribal accounts which have not been under the supervision of the Secretary of Interior in contrast to the miserable tract record of the Secretary of Interior in respect to those operations under his supervision and management, and;

WHEREAS, H.R. 4566 entitled "A Bill to establish Federal standards and regulations for the conduct of gambling activities within Indian Country and for other purposes" proposes Federal Regulation over a matter the Federal Courts have held is within the exclusive jurisdiction of the Indian Tribes, and in effect transfer what is the exclusive right of the Indian Tribes to the Secretary of Interior.

NOW, THEREFORE, BE IT RESOLVED, that the Red Lake Band does hereby oppose H.R. 4566 in it's entirety or any other legislation that would have the purpose of imposing upon Indian Tribes, Federal Standards and Regulations for the conduct of gambling activities

OFFICERS
ROGER A. JOURDAIN, Chairman
ROGER GRAVES, SR., Secretary
JAMES STRONG, Treasurer

DISTRICT REPRESENTATIVES
[illegible]

ADVISORY COUNCIL
[illegible]

LEGAL COUNSEL
[illegible]

RED LAKE BAND OF CHIPPEWA INDIANS

UPPER RED LAKE
LOWER RED LAKE

Res. No. 70-84
Page three

BE IT FURTHER RESOLVED, that if any Federal legislation is enacted imposing upon Indian Tribes Federal Standards and Regulations for the conduct of gambling activities within Indian Country that the Red Lake Band of Chippewa Indians be exempted for its application.

FOR: 9
AGAINST: 0

We do hereby certify that the foregoing resolution was duly presented and enacted upon at the Special Meeting of the Tribal Council held on Friday, March 30, 1984, with a quorum present at the Tribal Office, Red Lake, Minnesota.

Roger B. Jourdain

Roger A. Jourdain, Chairman

Roger Graves Sr.

Roger Graves, Sr., Secretary

100 115

United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
WASHINGTON, D.C. 20245

IN REPLY REFER TO:

APR 11 1986

Memorandum

To: All Area Directors

From: Deputy to the Assistant Secretary - Indian Affairs (Tribal Services)

Subject: Indian Gambling Survey

Legislation is pending before Congress concerning gambling in Indian country. The legislation identifies three classes of gambling and proceeds to identify what type of regulatory scheme will apply to each class. Class I gambling includes social games for prizes for minimal value, or traditional forms of Indian gambling in connection with tribal ceremonies or celebrations. Class II gambling includes bingo, lotto, pull-tabs, punch boards, and other games similar to bingo. Class III gambling includes all other forms of gambling, such as para-mutual wagering, lotteries, casino games, card games, etc.

It is possible that the Indian gambling legislation may be drafted to place a moratorium on Class III gambling in Indian country for a set period of time, and that it will grandfather in the Class III gambling operations which are being conducted in a lawful manner at the present time. In anticipation that the legislation may have to list specifically the Class III gambling operations currently in existence in Indian country, it is necessary for the Bureau of Indian Affairs to update and confirm the nature and location of Class III gambling activities in Indian country. In addition, an update of existing Class II operations is also needed.

Please complete the attached survey instrument and submit your findings to the Central Office no later than April 17, 1986. If you need further clarification or have any questions, please contact Cathy Wilson at (202) 343-4031.

Hazel E. Elbert

Attachment

Survey of Indian Gambling Activity

April 28, 1986

Compiled and Prepared by

Bureau of Indian Affairs
U.S. Department of Interior
18th and C Streets, N.W.
Washington, D.C. 20240

Indian Gambling Activities
Survey Form
April 11, 1986

____
Area Office

This survey is intended to identify the lawful gambling operations which are presently owned, operated, authorized, or regulated by Tribes, and which fall within the definition of either Class II or Class III gambling activity. It is not necessary to specify Class I gambling activities engaged in by Tribes. Please refer to the definitions of Class I, II, and III gambling activities listed in the attached memorandum.

I. Name of Tribe:____

II. Types of Gambling Activity Tribe is engaged in:

A. Class II Gambling

1. ______Bingo
2. ______Lotto
3. ______Pull-tabs
4. ______Punch boards
5. ______Other bingo-type games
Please specify and describe:______________________________
____
____
____
6. ______Start-up date for bingo operation:____________________

B. Class III Gambling

1. ______horse racing - start-up date:___________________________
2. ______dog racing - start-up date:____________________________
3. ______other para-mutual wagering - start-up date:______________
please specify and describe:______________________________
____
____
____
4. ______card games - start-up date:____________________________
please specify and describe:______________________________
____
____
5. ______casino games - start-up date:__________________________
please specify and describe:______________________________
____
____
____
6. ______lottery - start-up date:_________________________________

Indian Gambling Survey Results Update
April 28, 1986

Page 1

ABERDEEN
Area Office

TRIBE	CLASS II	CLASS III
Cheyenne River	**start-up**____	Lottery **start-up** January 1986
Yankton	Bingo/pull-tabs **start-up** 6-7-85	**start-up**____
Sisseton	Bingo/pull-tabs **start-up** 11-14-34	**start-up**____
Flandreau	Bingo/pull-tabs **start-up** February 1985	**start-up**____
Fort Berthold	Bingo/pull-tabs **start-up** October 1985	**start-up**____
Fort Totten	Bingo/pull-tabs **start-up** August 1985	Blackjack **start-up** August 1985
Turtle Mountain	Bingo/pull-tabs **start-up** 2-3-84	**start-up**____
Winnebago (Iowa)	Bingo/pull-tabs **start-up** October 1984	Cards and Machines **start-up** October 1984
	start-up____	**start-up**____
	start-up____	**start-up**____
	start-up____	**start-up**____
	start-up____	**start-up**____
	start-up____	**start-up**____

Indian Gambling Survey Results Update
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ALBUQUERQUE
Area Office

TRIBE	**CLASS II**	**CLASS III**
Acoma Pueblo	Bingo/pull-tabs **start-up** October 1983	**start-up**____
San Juan Pueblo	Bingo/pull-tabs/punch boards **start-up** May 1985	**start-up**____
Sandia Pueblo	Bingo/pull-tabs **start-up** January 1984	**start-up**____
Southern Ute	Bingo/pull-tabs/punch boards **start-up** 1972	**start-up**____
Tesuque Pueblo	Bingo/pull-tabs/punch boards **start-up** May 1984	**start-up**____
Ute Mountain Ute	Bingo/pull-tabs/punch boards **start-up** August 1984	Electronic and video poker **start-up** August 1984
	start-up____	**start-up**____
	start-up____	**start-up**____
	start-up____	**start-up**____
	start-up____	**start-up**____
	start-up____	**start-up**____
	start-up____	**start-up**____
	start-up____	**start-up**____

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ANADARKO
Area Office

TRIBE	**CLASS II**	**CLASS III**
Iowa Tribe of Oklahoma	Bingo **start-up**________	**start-up**__________
Citizen Band of Potawatomi	Bingo/pull-tabs **start-up**________	**start-up**__________
Sac and Fox of Oklahoma	Bingo/pull-tabs **start-up**________	**start-up**__________
Kickapoo Tribe of Kansas	Bingo **start-up**________	**start-up**__________
Iowa Tribe of Kansas and Nebraska	Bingo **start-up**________	**start-up**__________
Praire Band of Potawatomi	Bingo **start-up**________	**start-up**__________
Cheyenne and Arapahoe of Oklahoma	Bingo/pull-tabs **start-up**________	**start-up**__________
Kaw Tribe	Bingo/pull-tabs **start-up**________	**start-up**__________
Tonkawa Tribe of Oklahoma	Bingo/pull-tabs **start-up**________	Video card games **start-up**__________
Ponca Tribe of Oklahoma	Bingo/pull-tabs **start-up**________	**start-up**__________
Pawnee Tribe of Oklahoma	Bingo **start-up**________	**start-up**__________
Otoe-Missouria of Oklahoma	Bingo/pull-tabs **start-up**________	**start-up**__________
KCA-Joint Kiowa, Comanche, and Apache of Ok.	Bingo **start-up**________	**start-up**__________

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ANADARKO
Area Office

TRIBE	**CLASS II**	**CLASS III**
Kiowa Tribe of Oklahoma	bingo/pull-tabs **start-up**________	**start-up**________
Comanche Tribe of Oklahoma	bingo **start-up**________	**start-up**________
Ft. Sill Apache	bingo **start-up**________	**start-up**________
Apache Tribe of Oklahoma	Bingo **start-up**________	**start-up**________
W.C.D.-Joint Wichita, Caddo and Delaware	Bingo/pull-tabs **start-up**________	**start-up**________
	start-up________	**start-up**________
	start-up________	**start-up**________
	start-up________	**start-up**________
	start-up________	**start-up**________
	start-up________	**start-up**________
	start-up________	**start-up**________
	start-up________	**start-up**________
	start-up________	**start-up**________

Indian Gambling Survey Results Update
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BILLINGS
Area Office

TRIBE	CLASS II	CLASS III
Fort Belnap	Bingo/pull-tabs start-up 1983	start-up
Northern Cheyenne	Bingo/pull-tabs start-up 5-30-84	Electronic poker start-up 5-30-84
	start-up	start-up
	start-up	start-up
	start-up	start-up
	start-up	start-up
	start-up	start-up
	start-up	start-up
	start-up	start-up
	start-up	start-up
	start-up	start-up
	start-up	start-up
	start-up	start-up

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EASTERN

Area Office

TRIBE	CLASS II	CLASS III
Poarch Band of Creeks	Bingo/pull-tabs **start-up** April 1985	**start-up**_______
Seminole Tribe	Bingo **start-up** 1979	**start-up**_______
North Carolina Cherokee	Bingo **start-up** August 1982	**start-up**_______
Seneca Nation	Bingo/pull-tabs **start-up** June 1980	**start-up**_______
St. Regis Mohawk	Bingo/otto/pull-tabs **start-up** May 25, 1985	Lottery **start-up** unknown
Oneida	Bingo/pull-tabs **start-up** October 1, 1985	**start-up**_______
	start-up_______	**start-up**_______
	start-up_______	**start-up**_______
	start-up_______	**start-up**_______
	start-up_______	**start-up**_______
	start-up_______	**start-up**_______
	start-up_______	**start-up**_______
	start-up_______	**start-up**_______

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JUNEAU
Area Office

TRIBE	CLASS II	CLASS III
No Indian Gambling	start-up________	start-up________
	start-up________	start-up________
	start-up________	start-up________
	start-up________	start-up________
	start-up________	start-up________
	start-up________	start-up________
	start-up________	start-up________
	start-up________	start-up________
	start-up________	start-up________
	start-up________	start-up________
	start-up________	start-up________
	start-up________	start-up________
	start-up________	start-up________

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MINNEAPOLIS
Area Office

TRIBE	CLASS II	CLASS III
Hannahville Indian Community of Michigan	Bingo/pull-tabs **start-up** 1983 or 1984	Blackjack and Poker/Casino games **start-up** 12-8-85
Bay Mills Indian Community of Michigan	Bingo/pull-tabs/punchboards **start-up** 1980	Blackjack and poker/Casino games **start-up** 7-4-84
Saginaw Chippewa	Bingo/pull-tabs **start-up** 1975	Blackjack ano poker/Casino games **start-up** unknown
Sault Ste. Marie Chippewa	Bingo/pull-tabs **start-up** 1980	21/Casino games **start-up** unkown
Grand Traverse Band of Ottawa and Chippewa	Bingo/pull-tabs **start-up** May 1984	Card games/Casino games **start-up** Sept. 1984 and Nov. 1985
Keweenaw Bay Indians of the L'Anse Reservation	Bingo/pull-tabs **start-up** approx 1980	Blackjack and poker/Casino games **start-up** unknown
Fond du Lac	Bingo/pull-tabs **start-up** January 1981	**start-up**
Grand Portage	Bingo/pull-tabs **start-up** 1983	**start-up**
Leech Lake	Bingo/pull-tabs **start-up** May 1983	**start-up**
Mille Lacs	Bingo/pull-tabs **start-up** 1082	**start-up**
White Earth	Bingo/pull-tabs **start-up** May 1984	**start-up**
Red Lake	Bingo/pull-tabs **start-up** May 1985	**start-up**
Prairie Island	Bingo/pull-tabs **start-up** February 1984	Casino games (bingo 21 and Bingo Lett **start-up** unknown

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MINNEAPOLIS
Area Office

TRIBE	CLASS II	CLASS III
Lower Sioux Indian Community	Bingo/pull-tabs/punchboards start-up 10-29-84	Casino games start-up unknown
Shakopee	Bingo/pull-tabs start-up October 1982	start-up
Menominee	Bingo/pull-tabs start-up 10-5-81	start-up
Lac Courte Oreilles	Bingo/pull-tabs start-up April 1983	start-up
Red Cliff Band	Bingo/pull-tabs start-up Sept. 1983	start-up
St. Croix Chippewa	Bingo/pull-tabs start-up 1978	start-up
Sokaogon Chippewa (Mole Lake)	Bingo/pull-tabs start-up 3-16-79	start-up
Stockbridge Munsee	Bingo/pull-tabs start-up January 1984	start-up
Wisconsin Winnebago (Rainbow Bingo)	Bingo/Pull-tabs start-up 9-13-84	start-up
Wisconsin Winnebago (Bingoland Palace)	Bingo start-up Nov. 1983 - (then closed and re-opened 7-26-85)	start-up
Bad River Band of Chippewas	Bingo/pull-tabs start-up 1983	start-up
Forest County Potawatomi	Bingo/pull-tabs start-up summer 1984	start-up
Lac du Flambeau Band of Chippewas	Bingo/pull-tabs start-up 1979-1980	start-up

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MINNEAPOLIS
Area Office

TRIBE	**CLASS II**	**CLASS III**
Oneida Tribe	Bingo/pull-tabs **start-up** Sept. 1976	**start-up**
	start-up	**start-up**
	start-up	**start-up**
	start-up	**start-up**
	start-up	**start-up**
	start-up	**start-up**
	start-up	**start-up**
	start-up	**start-up**
	start-up	**start-up**
	start-up	**start-up**
	start-up	**start-up**
	start-up	**start-up**
	start-up	**start-up**

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MUSKOGEE
Area Office

TRIBE	**CLASS II**	**CLASS III**
Chickasaw Nation	Bingo/pull-tabs (two locations) **start-up** March 1982; November 1984	**start-up**
Muscogee Creek Nation	Bingo/pull-tabs **start-up** May 1984	**start-up**
Thlopthlocco Tribal Town	Bingo/pull-tabs **start-up** 2-22-81	**start-up**
Eastern Shawnee	Bingo/pull-tabs **start-up** December 1984	**start-up**
Seneca-Cayuga	Bingo/pull-tabs **start-up** December 1982	**start-up**
	start-up	**start-up**
	start-up	**start-up**
	start-up	**start-up**
	start-up	**start-up**
	start-up	**start-up**
	start-up	**start-up**
	start-up	**start-up**
	start-up	**start-up**

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NAVAJO
Area Office

TRIBE	CLASS II	CLASS III
No Indian Gambling	start-up________	start-up__________
	start-up________	start-up__________
	start-up________	start-up__________
	start-up________	start-up__________
	start-up________	start-up__________
	start-up________	start-up__________
	start-up________	start-up__________
	start-up________	start-up__________
	start-up________	start-up__________
	start-up________	start-up__________
	start-up________	start-up__________
	start-up________	start-up__________
	start-up________	start-up__________

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PORTLAND
Area Office

TRIBE	CLASS II	CLASS III
Nooksack	Bingo start-up________	start-up________
Swinomish	Bingo/pull-tabs start-up________	start-up________
Tulalip	Bingo/pull-tabs start-up________	start-up________
Spokane Tribe	Pull-tabs start-up________	start-up________
Siletz	Bingo start-up________	start-up________
Makah	Bingo/pull-tabs start-up________	start-up________
Lower Elwha	Bingo/pull-tabs start-up________	start-up________
Shoshone-Bannock	Bingo start-up________	start-up________
Metlakatla	Bingo/pull-tabs start-up________	start-up________
Umatilla	Bingo/pull-tabs start-up________	start-up________
Puyallup	Bingo (games run by individual members) start-up________	start-up________
Shoalwater Bay	Bingo (games run by individual members) start-up________	start-up________
	start-up________	start-up________

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PHOENIX
Area Office

TRIBE	CLASS II	CLASS III
Fort McDowell (Mohave-Apache)	Bingo/pull-tabs start-up 9-29-84	Lotto/Keno/Electronic bingo start-up 9-29-84
Pascua Yaqui	Bingo start-up January 1983	Electronic Bingo start-up January 1983
Quechan	Bingo start-up July 1983	start-up
Tohono O'odham (Papago)	Bingo/pull-tabs start-up 4-18-84	Electronic bingo start-up 4-18-84
Yavapai-Prescott	Bingo/pull-tabs start-up March 1983	Electronic bingo start-up March 1983
	start-up	start-up
	start-up	start-up
	start-up	start-up
	start-up	start-up
	start-up	start-up
	start-up	start-up
	start-up	start-up
	start-up	start-up

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SACRAMENTO
Area Office

TRIBE	**CLASS II**	**CLASS III**
Bishop Reservation	Bingo/pull-tabs **start-up** 1984	**start-up**________
Chicken Ranch Rancheria	Bingo/pull-tabs **start-up** 1984	**start-up**________
Cahto Tribe of Laytonville Rancheria	Bingo **start-up** Spring 1985	**start-up**________
Rumsey Rancheria	Bingo/pull-tabs **start-up** 1985	**start-up**________
Santa Rosa Rancheria	Bingo/pull-tabs **start-up** 1984	**start-up**________
Hoopa Valley	Bingo **start-up** 4/12/85	**start-up**________
Pit River	Bingo **start-up** 2/14/84	**start-up**________
Resighini Rancheria	Bingo **start-up** Spring 1985	**start-up**________
Barona Band of Mission Indians	Bingo/pull-tabs **start-up** 4-15-83	**start-up**________
Cabazon Band of Mission Indians	Bingo/pull-tabs **start-up** 3-3-83	card games **start-up** 3-3-83
Morongo Band of Mission Indians	Bingo/pull-tabs **start-up** 10-1-84	**start-up**________
Santa Ynez Band of Mission Indians	Bingo/pull-tabs **start-up** 11-6-83	**start-up**________
Soboba Band of Mission Indians	Bingo/pull-tabs **start-up** 2-22-85	**start-up**________

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SACRAMENTO
Area Office

TRIBE	CLASS II	CLASS III
Sycuan Band of Mission Indians	Bingo/pull-tabs start-up November 1983	start-up
	start-up	start-up
	start-up	start-up
	start-up	start-up
	start-up	start-up
	start-up	start-up
	start-up	start-up
	start-up	start-up
	start-up	start-up
	start-up	start-up
	start-up	start-up
	start-up	start-up
	start-up	start-up

SUPPLEMENTAL STATEMENT
OF
STANLEY G. JONES, SR., CHAIRMAN
TULALIP TRIBES OF WASHINGTON

before the
SELECT COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE
June 17, 1986

on
H.R. 1920, the Indian Gaming Regulatory Act
S.902, the Indian Gaming Control Act
S.2557, the Indian Gambling Authorization and Regulation Act of 1986

I appreciate the opportunity to submit this supplemental statement to the Committee on behalf of the Tulalip Tribes regarding Indian gaming legislation. At the time of my prior testimony before the Committee on June 26, 1985, S.902 was the only bill pending before the Committee. Since that time, H.R. 1920 has been approved by the House of Representatives and S.2557, the Administration's gaming proposal has been introduced in the Senate.

Our views as reflected in the earlier statement with respect to S.902 have not changed; therefore, my views in this statement are addressed to H.R. 1920 and S.2557.

The Tulalip Tribes recommends enactment of H.R. 1920, if amended as suggested herein.

H.R. 1920

We believe there is a consensus among the tribes favoring enactment of H.R. 1920, with various amendments being desired by the interested tribal groups.

The Tulalip Board of Directors, our tribal governing body, wishes to emphasize that our support for the enactment of legislation in the area of Indian gaming should not be misinterpreted as a reflection of a lack of confidence in the strength of our inherent sovereign powers. The Board is totally satisfied with our governmental right to license, operate and regulate gaming on lands within our jurisdiction, exclusive of the State of Washington's control and jurisdiction. In State of Washington v. Hatch, et. al., C-83-1518R (W.D. Wash., August 14, 1984), appeal dismissed (9th Circuit., February 21, 1985) this has been firmly and definitely settled and decided. Moreover, the Federal Courts, including several Circuit Courts, have consistently ruled in favor of tribal sovereignty when the States have contended that their sovereignty and jurisdiction extends to gaming operations conducted on reservations.

The Tulalip Board of Directors' decision to support enactment of Indian gaming legislation is based primarily on pragmatism, and the belief that such enactment would codify the current state of the law applicable to Indian gaming. By codifying the civil/regulatory and criminal/prohibitory schemes in a statute, Indian gaming would be insulated from future legal challenges. Given the capital investment of the Tulalip Tribes, among others, in gaming operations, such insulation would guarantee certainty with respect to these operations for the tribes and their non-Indian clientele. The operation further provides a definite economic benefit to Tribal members through employment and the non-Indian community as well by the purchase of goods and services and the spending of an increased disposable income not otherwise available. For example, in fiscal year 1985 payroll was in excess of $1,270,000.00 and goods and services purchased exceeded $1,200,000.00.

Specifically, H.R. 1920 establishes a Federal regulatory scheme for gaming activities conducted on Indian lands. A National Indian Gaming Commission is created to provide Federal recognition and regulation of Indian gaming. We are pleased that the sponsors of H.R. 1920 have reflected their confidence in Indian people by providing for Indian membership on the Commission and by a requirement that appointments to the Commission be made on a bipartisan basis. The eight member Commission is made up of at least three Indian members, a member appointed by the Attorney General, one member representing the States, and the Chairman selected by the Secretary of the Interior. The bill divides gaming into three groupings:

Class I covers traditional or ceremonial Indian gaming and is within the exclusive jurisdiction of the tribes.

Class II covers bingo and bingo type gaming and is regulated by the tribes. Tribal ordinances must meet the specific standards of the Act, and be approved by the Chairman. The Commission has the authority to order closures and levy fines for violations of the Act.

Class III covers gaming beyond Class II and involves the more complex and controversial forms of gaming. These include such gaming as casinos, pari-mutuel dog and horse racing, Jai alai, etc. As passed by the House, Class III has been deleted from the bill, a moratorium is imposed for 4-years, a 2-year GAO study is mandated, Congress has 2 years to act on the GAO study, if Congress fails to act at the end of the 4 year moratorium, Class III gaming remains under the state of the law, and Class III games in operation as of January 1, 1986 are grandfathered.

The bill also provides for extensive requirements on management contracts.

We are aware that certain interests will propose amendments to H.R. 1920 to modify the definition of "bingo" (Class II gaming that authorizes bingo and pulltab and punchboard sales) to include cardgames that meet the civil/regulatory scheme in specific States. Such cardgames now fall under the Class III gaming category that is the subject of the moratorium discussed above.

Mr. Chairman, the Tulalip Tribes is unalterably opposed to any amendments designed to use the umbrella of Class II gaming for activities clearly under the Class III gaming category. There is a sound and justifiable rationale for the current definition of "bingo" that includes pulltab and punchboard sales. In those States where all three are permissable, the charitable bingo games have traditionally sold pulltabs or punchboards as well. In those States where the same legal circumstances prevail, Indian games have followed the same practice.

We firmly believe that any move by others to expand Class II gaming beyond that in H.R. 1920 will jeopardize the carefully crafted language that is now in place in the bill. The proponents of Class III gaming should explore alternative amendments rather than attempting to expand Class II gaming beyond politically acceptable limits.

Our proposed amendments to H.R. 1920, attached hereto, would (1) return the assessment of Indian gaming to that proposed in the Amendment in the Nature of a Substitute used at the House Committee markup; (2) return the composition of the National Indian Gaming Commission to that proposed in the Committee substitute bill; and (3) legalize Class II gaming activities.

To reiterate, the Tulalip Tribes urges the Committee to seek enactment of H.R. 1920 prior to adjournment of this Congress.

S.2557

Mr. Chairman, every President, commencing with President Nixon to President Reagan has endorsed the concept of Indian self-determination as a cornerstone of National Indian Policy. Unfortunately, the Attorney General and Secretary of the Interior, the authors of S.2557, totally ignored this well-accepted concept in their joint formulation of the Administration's gaming proposal.

This is notably apparent in comparing the role assigned to tribal governing bodies in S.902 and H.R. 1920 as contrasted to S.2557. The former bills assume that tribal governing bodies will be the primary regulatory bodies over the area of Indian gaming, except for management contracts where the Federal role is extensive and that of a trustee. S.2557, on the other hand, assumes that the Commission, firmly controlled by the Attorney General and Secretary of the Interior, will be the primary regulatory body with tribal governing bodies being relegated to a secondary role.

We ask the Committee to study our assertions within the context of policy formulation in the Indian field. If you agree with our assertions, we further ask that you reject S.2557 on these grounds alone.

We wish to address several specific provisions that contribute further to our objections to S.2557. Section 302 establishes the American Indian Bingo Commission to oversee the regulatory provisions of the bill. This Commission is a creature of the Attorney General and the Secretary of the Interior since these two officials are vested with authority to select three employees from their respective departments (two from Interior and one from Justice) to serve on the Commission. It is located in Interior and the Secretary is granted authority to appoint one of his designees to serve as Chairman.

This Commission is deficient in several other major respects as well: (1) it fails to appoint the members on a bipartison basis; (2) it fails to include a single member from the Indian Community; and (3) it cannot function in an independent and "arms length" manner from Justice and interior.

Having proposed the establishment of a Commission in S.2557, whose control is in the hands of the Attorney General and Secretary, the Administration seeks to vest it with broad rule-making authority pursuant to section 305. Two provisions in this section represent an undisguised attempt to destroy the economic viability of Indian gaming by narrowing, if not eliminating altogether, our competitive edge over State-regulated charitable games.

First, section 305(a) would permit the Commission to curtail the otherwise unlimited operating hours that Indian gaming enjoys under the current state of the law.

Second, section 305(a)(8) would permit the Commission to establish limits on the otherwise unlimited jackpots and prizes in bingo games conducted in Indian gaming facilities.

We view these two provisions as an attempt to impose State regulations and standards in the two areas where inherent tribal sovereignty guarantees a competitive edge to Indian gaming in operating hours and jackpots and prizes. This competitive edge is the very feature that non-Indian patrons of Indian gaming find so attractive. But if enacted into law, these two forgoing provisions would ultimately destroy that competitive edge and the economic benefits accruing to Indian tribes and their members through Indian gaming enterprises.

An earlier provision, section 301, "definitions," poses an economic threat to those tribes, including the Tulalip Tribes, who are located in States where pulltab and punchboard sales are permissable under the civil/regulatory scheme. This section narrows the definition of "bingo" to allow bingo games only to be conducted in Indian gaming facilities and eliminates the opportunity for the tribes to sell pulltabs and punchboards in combination with bingo games. Clearly, this provision must be viewed as an attempt to erode the economic viability of Indian bingo games located in States where pulltab and punchboard sales are legal.

For example in fiscal year 1985, 42.5% ($6,000,000.00) of the Tribe's gross gaming income was derived from pulltab sales. Loss of pulltab sales would (1) reduce the Tribe's gross profit a minimum of 1.2 million dollars, (2) cause a gaming employment reduction by some 14% to 16%, and (3) severely and adversely impact the remaining operations of the gaming enterprise.

All Tribal, governmental and social programs and their employees dependent upon gaming revenues for support would also be adversely impacted as well as the Tribe's ability to meet its debt service on the gaming facility, including federally guaranteed obligations.

When applied in combination, sections 301, 305(a)(4) and 305(a)(8) strike at the economic heart of many Indian gaming enterprises owned and operated by tribal entities. On the one hand, the Administration through President Reagan's Indian Policy Statement, January 1983, encourages tribal governing bodies to assume the lead for economic development on their reservations; but on the other hand, the very same Administration recommends that Congress enact S.2557, a measure designed to kill off the economic benefits that sovereign tribal groups have generated through gaming operations.

Through this supplemental statement, the Tulalip Tribes has identified several disturbing provisions in S.2557 that makes the bill totally unacceptable to us. We ask the Committee to reject this measure and move quickly to support enactment of H.R. 1920 in this Congress.

The need for enactment of constructive legislation in the area of Indian gaming becomes even more critical in light of the U.S. Supreme Court's recent announcement that it will review the Morongo and Cabazon Cases involving Indian gaming in the State of California. Congress possesses not only the authority but the responsibility to enact legislation that will establish a clear and concise public policy in the area of Indian gaming. By acting promptly in this regard, the Congress will fulfill its trust responsibility in a timely and responsible manner.

The Tulalip Tribes appreciates the opportunity to submit further views and recommendations on Indian gaming legislation pending before the Committee.

PROPOSED AMENDMENTS
TO
H.R. 1920

1. a) On page 4, line 23, delete the word "eight" and insert the word "seven."

b) On page 5, line 12 through 14, delete all of subparagraph "(D)."

c) On page 6, line 2, delete the word "paragraphs" and insert the word "paragraph."

d) On page 6, line 2, delete "and (1) (D)".

These amendments authorize a seven-member National Indian Gaming Commission by eliminating the appointment of an eighth member to represent the interests of the States.

We contend that the Commission authorized to implement and manage the Federal regulatory scheme for Indian Gaming should be a Federal/Indian entity.

State interests are adequately represented by the Act and there are no compelling arguments to justify a Commission slot for the States' interests.

2. a) Delete on page 12, line 13, "subparagraphs" and insert "subparagraph."

b) On page 12, line 13, delete "and (C)."

c) On page 12, line 18, delete "or(c)."

d) On page 12, delete lines 21 through 23 and insert the following: "Indian Tribe only if a gaming activity is specifically prohibited on Indian lands by Federal statutory law."

e) On page 13, delete lines 1 through 3.

3. a) On page 24, line 4, delete "three-quarters" and insert "one half."

b) On page 24, line 6, delete "2-1/2" and insert "2".

These amendments limit one-half of the Commission's budget to be derived from a 2-percent assessment on the gross revenues from each Indian Gaming enterprise.

We believe the Commission's budget should be shared on a 50/50 basis between the Federal Government and Indian Gaming activities. If there were no Commission authorized in the Act, the Federal Government arguably could be required to fund all of the trust responsibilities related to Indian Gaming.

We view the 50/50 sharing of the Commission's budget a more equitable arrangement.

TOWN RESOLUTION - #86-3

WHEREAS, Town of Menominee came into existence in 1961 as a result of federal action to terminate the Menominee Tribe, and

WHEREAS, Town of Menominee has enjoyed a close working relationship with the Menominee Indian Tribe of Wisconsin, and

WHEREAS, Town of Menominee because of its close relationship is familiar with the Tribal budgeting process and the workings of the Tribal Government, and

WHEREAS, Town of Menominee has witnessed the efforts of the Menominee Indian Tribe to develop a self sufficient form of government through economic development, and

WHEREAS, Town of Menominee is aware that certain efforts are being made to eliminate Tribally owned Bingo, and

WHEREAS, The Menominee Tribal Bingo is an extremely important source of revenue for the Menominee Indian Tribe.

NOW, THEREFORE, BE IT HEREBY RESOLVED, that the Menominee Town Board of Supervisors at a meeting held on the 26th day of June, 1986, as follows:

SECTION 1. The Menominee Town Board of Supervisors hereby goes on record in support of the Menominee Tribal Bingo.

SECTION 2. That this Resolution be made available to the Menominee Indian Tribe for their use in presentations to committees at hearings and other uses as they deem necessary.

MOTION FOR ADOPTION:
SECONDED BY: Edith J. [illegible]
ADOPTED:

I, Carol LaTender, Clerk of the Town of Menominee, do hereby certify that the foregoing Resolution is a true and correct copy of said Resolution as passed this 26th day of June, 1986, by the Town of Menominee Supervisors.

Carol A. LaTender
Carol A. LaTender, Clerk
Town of Menominee

COUNTY RESOLUTION - #86-17

WHEREAS, Menominee County came into existence in 1961 as a result of federal action to terminate the Menominee Tribe, and

WHEREAS, Menominee County has enjoyed a close working relationship with the Menominee Indian Tribe of Wisconsin, and

WHEREAS, Menominee County, because of its close relationship, is familiar with the Tribal budgeting process and the workings of the Tribal Government, and

WHEREAS, Menominee County has witnessed the efforts of the Menominee Indian Tribe to develop a self sufficient form of government through economic development, and

WHEREAS, Menominee County is aware that certain efforts are being made to eliminate Tribally owned Bingo, and

WHEREAS, The Menominee Tribal Bingo is an extremely important source of revenue for the Menominee Indian Tribe.

NOW, THEREFORE, BE IT HEREBY RESOLVED, that the Menominee Board of Supervisors at a meeting held on the 26th day of June, 1986, as follows:

SECTION1. The Menominee County Board of Supervisors hereby goes on record in support of the Menominee Tribal Bingo.

SECTION 2. That this Resolution be made available to the Menominee Indian Tribe for their use in presentations to committees at hearings and other uses as they deem necessary.

MOTION FOR ADOPTION:
SECONDED BY: Patricia Robeck
ADOPTED: 6-26-86

I, Carol A. LaTender, Clerk of the County of Menominee, do hereby certify that the foregoing Resolution is a true and correct copy of said Resolution as passed this 26th day of June, 1986, by the Menominee County Board of Supervisors.

Carol A. LaTender, Clerk
County of Menominee

SNOHOMISH COUNTY
SHERIFF'S DEPARTMENT
R. M. DODGE, *Sheriff* D. ENGELBRETSON, *Undersheriff*
4th FLOOR COURTHOUSE
EVERETT, WASHINGTON 98201 • (206) 259-9393

July 2, 1986

Senator Mark Andrews, Chairman
Senate Select Committee on Indian Affairs

Dear Senator Andrews:

I write this letter concerning the Tulalip Tribes of Washington's gaming enterprise located on the Tulalip Indian Reservation in Snohomish County, Washington for the due consideration of the Senate Select Committee on Indian Affairs now considering H. R. 1920, S.902 and S.2557.

I am personally and professionally acquainted with the management and operation of the Tulalip Bingo and pull tab gaming conducted at the Tulalip Bingo Center.

The Tulalip Indian Reservation is a PL280 reservation and as Sheriff of Snohomish County I am the chief law enforcement officer responsible for investigation of crimes committed by or against Tribal members on the reservation.

The controls, checks and balances established by the all tribal management has resulted in a gaming operation, in my opinion, free from outside or corrupt influences or practices. It is a well run and "clean" enterprise.

The security of the facility and the gaming public is adequately protected and includes off-duty members of my department. I might add that from the inception of planning and the final construction of the entertainment center, both sides have worked in a cooperative spirit to make sure that this operation remained free and clear of all outside influences that represent gambling interests, and both parties agree that these policies have afforded the protection and safety provided by the Sheriff and the image and integrity for the Tulalip Tribes.

I would urge that all due consideration and respect for tribal gaming in the nature of bingo, pull tabs and punch boards run by Tribes themselves be afforded by the committee in its consideration of the various legislative proposals. Thank you.

Sincerely yours,

ROBERT M. DODGE
Snohomish County Sheriff

RMD:d

1515 K Street, Suite 500
Sacramento, California 95814
(916) 324-5437

3580 Wilshire Boulevard, Suite 800
Los Angeles, California 90010
(213) 736-2273

State of California

Office of the Attorney General
John K. Van de Kamp
Attorney General

May 30, 1986

Honorable Mark Andrews, Chairman
Senate Select Committee on Indian Affairs
Room 838, Senate Hart Office Building
Washington, D.C. 20510

Dear Senator Andrews:

Administration Indian Gambling Bill

I recommend your support for the U. S. Department of Justice and Department of Interior draft proposal for the Indian Gambling Authorization and Regulation Act of 1986. This bill should meet the desires of Indian tribes to become more independent and self-supporting -- while helping to minimize concerns of law enforcement that Indian gambling operations will be infiltrated by criminal elements.

Specific features of the draft bill are particularly important. While the regulation of bingo on reservations would not be subject to state gambling laws, the provision for a federal commission to license and regulate games should reduce the danger of infiltration by criminal elements. The bill leaves intact the states' power to control all other forms of commercial gambling, alleviating the concern that tribal areas could become enclaves of (otherwise) illegal gambling within the states.

Because high stakes Indian bingo games compete with strictly regulated charitable bingo in California and may tend to invite criminal activity, no matter how well regulated, the State of California would prefer to exercise complete control of bingo within the state. Our concerns are reflected in a case now awaiting argument in the Supreme Court (State of California, et al. v. Cabazon Band of Mission Indians, et al., No. 85-1708). Our position in that case is that federal law now permits California to control gambling, including bingo, on Indian lands, and we adhere to that position. However, the administration bill is far superior to competing bills in respect to our concerns. I believe the bill is a reasonable compromise, and for that reason, recommend your support.

Very truly yours,

JOHN K. VAN DE KAMP
Attorney General

Attorney General
1275 WEST WASHINGTON
Phoenix, Arizona 85007
Robert K. Corbin
[602] 255-4266

June 30, 1986

The Hon. Mark Andrews
Chairman, Senate Select
 Committee on Indian Affairs
838 Senate Hart Office Building
Washington, D.C. 20510

Re: Indian Gambling Legislation

Dear Senator Andrews:

On June 17, 1986, the Select Committee on Indian Affairs of the Senate conducted a hearing for the purpose of receiving comments on three pieces of proposed federal legislation dealing with the subject of gambling within Indian country. These bills -- S.902 (the "Indian Gaming Control Act"), H.R. 1920 (the "Indian Gaming Regulatory Act") and S.2557 (the "Indian Gambling Authorization and Regulation Act of 1986") -- seek to reach an accommodation between the legitimate law enforcement concerns of the State and Federal governments and the desires of various Native American tribal groups to improve their economic status through the vehicle of gambling and gaming activities.

Although I was unable to be at the hearing in person, a representative from my office was in attendance and has summarized for me the presentations of the various witnesses. I have also examined the prepared statements which were distributed at the hearing. Based upon these circumstances, I would like to make the following observations in the hope that you and the Select Committee on Indian Affairs would take them into consideration.

To begin with, my position on the topic of Indian gambling remains as I had previously articulated before the Select Committee on Indian Affairs on June 26, 1985 regarding S.902. I stated at that time that the legitimate law enforcement concerns of the States, and in particular the State of Arizona, were being largely ignored by the federal authorities. I also argued that, rather than create new commissions and tiers of federal or tribal bureaucracies to deal with the problem, the national policy should be to enforce vigorously already existing State and federal laws governing gambling in Indian country. These laws, including some enacted by Congress decades ago, include the "Assimilative Crimes Act" (18 U.S.C. § 13), the "Indian Country Crimes Act" (18 U.S.C. § 1152), the "Organized Crime Control Act of 1970" (18 U.S.C. § 1955) and 15 U.S.C. § 1175, prohibiting the possession and use of gambling devices in Indian country.

The paralysis of resolve which, until recently, has characterized the federal response to the proliferation of unregulated gambling activities in Indian country has been extremely frustrating to State law enforcement officials. Had swift and decisive action been taken earlier, the problem now facing the Congress would be far less complicated. In this regard, I wish to reiterate my view that although the financial enhancement of Indian tribal economies may be a laudable and desirable objective, such a goal cannot be properly founded upon a disregard for the legitimate law enforcement concerns and policies of the various States.

Contrary to the assertions of various tribal gambling advocates, the issue is not simply one of "tribal sovereignty." Notions of tribal sovereignty as enunciated in Williams v. Lee, 358 U.S. 217 (1959), involving the right of reservation Indians "... to make their own laws and be ruled by them ...," (358 U.S. at 220), do not control the proper resolution of the issue. Stated otherwise, the right of reservation Indian tribal members to make their own laws and be ruled by them cannot logically be equated with a right to make tribal gambling laws and extend their application and/or immunities created thereunder to non-members. This distinction between tribal laws as applied to purely internal tribal matters, contrasted with laws purporting to immunize non-members from the enforcement of otherwise applicable state laws, is one that has gone largely ignored in the debate over gambling in Indian country.

As the Supreme Court has noted in *Rice v. Rehner*, 463 U.S. 713 (1983), the legitimate law enforcement and public policy concerns of the States are entitled to recognition and deference, particularly when the on-reservation activity may be anticipated to have a significant impact upon the off-reservation, non-Indian residents of the States. This principle is of particular relevance in the area of Indian gambling, since virtually the entire rationale for the activity in the first place is to attract non-Indians into Indian country to wager their money in ways and upon activities that are forbidden beyond Indian country to Indians and non-Indians alike.

Moreover, it should be kept in mind that *any* gambling operation, whether conducted by the States or by the tribes, relies for its economic "success" upon hundreds, thousands and in certain instances tens of thousands of gamblers to *lose* their wagers for each gambler who *wins* his or her wager. This is not a moralistic observation: it is nothing more than reality. Such a circumstance can hardly be ignored when examining whether or not Indian gambling will have an impact beyond the limits of Indian country.

In the twelve months that have passed since I made my comments on S.902, H.R.1920 has been amended in substantial respects. Moreover, the Department of Justice and the Department of Interior have completed their compromise draft bill, which proposal was formally introduced by Sen. Paul Laxalt (R. Nev.) as S.2557 on June 16, 1986. I would offer the following comments on S.902, H.R.1920 as amended and passed by the House on April 21, 1986, and S.2557.

First, I join Nevada Attorney General Brian McKay and New Mexico Attorney General Paul Bardacke in urging that, as set forth in their respective prepared statements of June 17, 1986, if new federal legislation addressing these issues is to be enacted, then S.2557 is far superior to either S.902 or H.R.1920. It is my view that the already critical problem of the influence of organized crime upon gambling throughout the Nation -- recognized in "The Impact: Organized Crime Today", Report to the President and the Attorney General, President's Commission on Organized Crime, April, 1986 -- can only be aggravated under S.902 and H.R.1920.

On the other hand, S.2557 seeks not only to establish the type of strict regulation and control over bingo within Indian country needed to frustrate its infiltration by criminal elements, it also clearly recognizes the jurisdiction of the States to enforce their laws relating to all other forms of gambling within their borders, including areas of Indian country. This, of course, recognizes the correct relationship between the States and the Federal Government with regard to the particularly local nature and impact of gambling activities.

Second, I share the views of Deputy Assistant Attorney General Victoria Toensing regarding S.2557. Unlike S.902 and H.R.1920, S.2557 establishes the strict regulatory and enforcement policies necessary to insure that both the law enforcement concerns of the States and the United States are met while also attempting to protect tribal bingo operations from becoming the mere pawns of non-tribal opportunists whose private objectives, notwithstanding their public pronouncements, may be less than altristic, if not plainly illegal. Furthermore, these observations are far from conjectural, as documented by footnote 9 in Ms. Toensing's prepared Statement of June 17, 1986 and in the June 17, 1986 Statement of John F. Duffy, Sheriff of San Diego County, California and Chairman of the National Sheriffs' Association's Law and Legislative Committee.

Third, the pendency of certain pieces of litigation throughout the Nation should be taken into account. In Arizona, as I stated last year, the lawsuit involving the attempt to introduce parimutuel jai alai onto the Gila River Indian Reservation has been submitted for decision to the United States District Court in Phoenix and a ruling is expected in the near future. Interestingly, although H.R. 1920 and S.2557 would clearly prohibit such games at the present time -- as would, in my opinion, S.902 as well -- representatives of the tribal government appeared before the Select Committee on June 17, 1986 and again advocated that notions of "tribal sovereignty" and "economic development" supported their position.

In this regard, it should be noted that on August 12, 1985, the tribal parimutuel jai alai ordinance was declared by the Phoenix Area Director of the Bureau of Indian Affairs to be of "... no force or effect." *See* Exhibit "A" attached hereto. Furthermore, on January 2, 1986, the Department of the Interior, through Deputy Assistant Secretary for Indian Affairs, Ross Swimmer, formally notified the tribal authorities in question that a prior "approval" of the parimutuel jai alai proposal (given by Mr. Swimmer's predecessor) was being withdrawn. Among the grounds cited for the withdrawal were that "... pari-mutuel jai alai is prohibited by the laws of Arizona ...." and that, in any event, the proposed activity was "... an enterprise that almost certainly would be prohibited under any gambling regulatory legislation which may be enacted by Congress." *See* Exhibit "B" attached hereto.

The other major piece of litigation presently pending is *Cabezon Band of Mission Indians v. County of Riverside, et al.* and *Morongo Band of Mission Indians v. County of Riverside, et al.*, 783 F.2d 900 (9th Cir. 1986), *prob. juris. noted*, 54 U.S.L.W. 3809 (June 9, 1986)(No. 85-1708). The issue in that case is whether a "P.L.280" State, such as California, has jurisdiction to enforce its laws concerning bingo in Indian country. While I support California's position in that case, the larger issues of Indian country gambling other than bingo (*e.g.*, parimutuel jai alai, lotteries, casinos, etc.) may not be addressed by the Supreme Court in the case.

Thus, federal action and/or legislation effectively addressing all forms of Indian country gambling, whether enacted before or after the judiciary acts in these or any other pending cases, seems to be essential. The more recently adopted policies of the Department of the Interior on the subject, coupled with the recognition by both the Department of Justice and Department of the Interior of the potential dangers inherent in Indian country gambling, suggest to me that the law enforcement concerns shared by myself and my fellow State Attorneys General are finally being given the recognition and deference that has been lacking in the past.

In this regard, however, only a continued will on the part of the Federal Government to enforce existing laws coupled with an informed fashioning of strong and effective laws by Congress will operate to control Indian country gaming while preserving its economic benefits to tribal governments. Of all of the proposals now pending, S.2557 proposes the only approach to a solution of the problem which comes close to recognizing the concerns of the States. While imperfect in some respects -- certain States insist persuasively that all gambling in Indian country should be subject to State control -- S.2557 represents a more logical response to the complex issues at hand.

While S.902 and H.R. 1920 are well-intentioned, it is my fear that the opportunities for abuse, exploitation and, above all, infiltration and infection of tribal gaming by criminal elements, organized and otherwise, are far more prevalent in them than in S.2557. For these reasons alone, S.2557, or legislation patterned upon it, is preferable to either S.902 or H.R.1920.

In conclusion, I would express my appreciation to you as well as to the members of the Select Committee on Indian Affairs for taking into consideration my observations and concerns. If I or my staff can be of any assistance to you in working toward a resolution of these problems, please do not hesitate to contact me.

Sincerely,

Bob Corbin

ROBERT K. CORBIN
Attorney General
State of Arizona

Muscogee (Creek) Nation
Claude A. Cox, Principal Chief

Office of Public Gaming
& Taxation
Wm. E. Foster, Commissioner

1986 JUL 31 [illegible] 8 46

July 28, 1986

The Honorable Mark Andrews, Chairman
U.S. Senate Select Committe on Indian Affairs
838 Hart Building
Washington, D.C. 20510

Dear Senator Andrews:

I am writing to urge that the Select Committee move as quickly as possible to mark-up and ultimately to enact adequate Indian Gaming Regulatory legislation.

There appears to be universal agreement that a compreshensive legislative scheme does not exist and that it is Congress' perogative to determine the scope of a gaming regulatory system. While there is not a complete consensus among all the tribes, there is very strong support for the regulatory scheme underlying H.R. 1920. I believe that with some modifications and the inevitable process of negotiation and compromise, a honorable piece of legislation can be enacted. Before this Congress draws to a close, I urge you to whatever steps are necessary to pass this legislation.

I thank you for support you have provided Indian people these many years, first as a Congressman and then Senator from North Dakota and as the Chairman of the Senate Select Committee on Indian Affairs.

Sincerely yours,

Wm. E. Foster
Commissioner

WEF/jh

Capitol Complex • Hiway 75 at Loop 56 • P.O. Box 580 • Okmulgee, Oklahoma 74447
Okmulgee Office (918) 756-8700 • Tulsa Facility (918) 299-8434

1986 AUG -5 AM 10 23

Pioneer Motor Inn

July 30, 1986

Mr. Mark Andrews, Chairman
Senate Select Committee on Indian Affairs
838 Hart Building
Washington, D.C. 20510

Dear Mr. Andrews:

Please be advised that we wholeheartedly endorse the concept of Gaming activities on Indian Reservations.

The Potawatomi Tribe located in Wilson, Michigan, has very responsibly offered games of chance to our area residents and many, many tourists from neighboring areas.

Our local Motels, Restaurants, and Gas Stations, have all benefited from this economic endevor. The "Trickle" effect of tourist dollars, as you know, helps every business in our area.

We encourage you to seek an amicable solution to this sensitive question and allow this great economic opportunity for the Potawatomi Tribe and our local community.

Also, we urge you to request the Attorney General and the Solicitor General to support the Indian Tribes in Cabazon and Morongo Missions Bands of Indian V. County of Riverside. We also urge swift Senate approval of H.R. 1920, the Indian Gaming Regulatory Act.

Sincerely:
PIONEER MOTOR INN

Merrie B. Sta...

Merrie B. Stankowicz
Owner

MBS/kp

Restaurant • Cocktail Lounge • Swimming Pool

2635 Ludington St., Escanaba, Michigan 49829, 906/786-0602

DELTA COUNTY AREA CHAMBER OF COMMERCE

TOURISM & CONVENTION COMMITTEE

July 30, 1986

Mr. Mark Andrews, Chairman
Senate Select Committee on Indian Affairs
838 Hart Building
Washington, D.C. 20510

Dear Mr. Andrews:

Please be advised that we wholeheartedly endorse the concept of Gaming activities on Indian Reservations.

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Also, we urge you to request the Attorney General and the Solicitor General to support the Indian Tribes in Cabazon and Morongo Missions Bands of Indian V. County of Riverside. We also urge swift Senate approval of H.R. 1920, the Indian Gaming Regulatory Act.

Sincerely:
DELTA COUNTY AREA CHAMBER OF COMMERCE
TOURISM & CONVENTION COMMITTEE

Joseph F. Stankowicz
Chairman

JFS/kp

Do it in Delta!
Michigan's Upper Peninsula

MEMBERS

Bay View Motel
Best Western Pioneer Motor Inn
Delta Inn Motel
Gladstone Motel
Golden Host Motor Inn
Hiawatha Motel
House of Ludington
Lencor Motel
Lindberg's Cabins
Memory Lane Motel
Northland Motor Inn
Norway Pines Motel
Ramada Inn
Sandy Shores Resort
Shorewood Motel
Sleepy Hollow Motel
Sunset Motel
Terrace Resort

July 31, 986

Mr. Mark Andrews, Chairman
Senate Select Committee on Indian Affairs
838 Hart Building
Washington, D.C. 20510

Dear Mr. Andrews:

The Delta County Tourism and Convention Bureau works closely with the Hannahville Indian Group. Their gaming activities not only provide needed income and job opportunities for their tribal members, but also affect the local economy appreciably.

The economic impact is just beginning to be felt within the community. In our area in particular, where tourism is needed to maintain a healthy economy, a well run gaming facility is a major attraction. The manner in which it is operated reflects on the good intentions of those responsible.

Please give your support to their first real entrance into the business world. I believe it provides economic rewards for everyone in the region. I also sincerely believe it creates a feeling of responsibility and pride to those involved. Your support of their endeavors will be welcomed.

Sincerely,

Howard F.Fontaine
President

HFF/bp

DELTA COUNTY TOURISM AND CONVENTION BUREAU

230 Ludington Street • Escanaba, Michigan 49829 • Phone: (906) 786-2192

Menominee Indian Tribe of Wisconsin

P.O. Box 397
Keshena, Wisconsin 54135

Telephone
1-715-799-3341

July 1, 1986

Senate Select Committee on
Indian Affairs
Hart Senate Office Building
Washington, D.C. 20510

Dear Mr. Chairman:

Enclosed is some supporting documentation in the cause of Indian Bingo for the Menominee Tribe.

Mr. Gordon Dickie, Sr., instructed me to send this information to you as soon as possible.

Sincerely,

Neoma Denning

Neoma Denning

LEGEND LAKE
Property Owners Association
P. O. BOX 401
KESHENA, WISCONSIN 54135

June 30, 1986

TO WHOM IT MAY CONCERN:

It has come to the attention of the Legend Lake Property Owners' Association that certain efforts are being made to eliminate Bingo operations owned and conducted by the Menominee Indian Tribe on the Reservation in Menominee County, Wisconsin.

As a member of the community the Association and its 1,800 members are fully cognizant of the efforts of the Tribe to promote economic development and greater opportunity for employment for members of the Tribe. The area is presently experiencing a very high rate of unemployment and the Tribe urgently needs the ability to continue its Bingo operations without interference or limitations in order to provide employment and needed revenue.

The Association therefore expresses its firm support for Menominee Tribal Bingo as an indication of its sincere interest in the welfare of the Tribe and the community as a whole.

Sincerely,

R. L. Gillis
President

RLG:ls

Sheriff Richard Germond
President
Adrian Michigan

L. Cary Bittick
Executive Director
Alexandria Virginia

JUN 25 9 49

NATIONAL SHERIFFS' ASSOCIATION

1450 DUKE STREET • ALEXANDRIA, VIRGINIA 22314 • 703-836-7827

Sheriff Don Omodt
1st Vice President
Minneapolis Minnesota

Sheriff Dwight Radcliff
2nd Vice President
Circleville Ohio

Sheriff Henry Healey, Jr.
3rd Vice President
New Haven Connecticut

Sheriff Lyle Swenson
4th Vice President
Mitchell South Dakota

Sheriff Bob Rice
5th Vice President
Des Moines Iowa

Sheriff Marshall Honaker
6th Vice President
Bristol Virginia

Sheriff Merrill Greathouse
7th Vice President
Thomaston Georgia

Sheriff Robert Turner
Sergeant At Arms
Prattville Alabama

Sheriff E. W. Pellicer
Secretary
Palatka Florida

Sheriff Richard J. Elrod
Treasurer
Chicago Illinois

Sheriff Louis Gianoli
Immediate Past President
Wausau Wisconsin

Sheriff Patrick Hogan
Immediate Past President
Hartford Connecticut

Courtney A. Evans
General Counsel
Washington DC

June 23, 1986

The Honorable Mark Andrews
Chairman
Select Committee on
Indian Affairs
United States Senate
Washington, D.C. 20510

Dear Sentor Andrews:

I want to thank you for the opportunity to testify before the Select Committee on the pending legislation to regulate Indian gambling. As you are aware, the sheriffs of this nation are gravely concerned about the impact of these bills on our Indian citizens. In my jurisdiction, I have witnessed the victimization of innocent Indians by organized crime as a result of unregulated gambling. I am anxious to work with you and other members of the Committee to protect other innocent Indian citizens from this insidious threat.

To summarize the National Sheriffs' Association (NSA) position on this issue, let me reiterate two points:

- We believe that each state has the right to regulate gambling for all its citizens--Indian and non-Indian alike. This is a question of states rights.
- In Public Law 280 states, where local law enforcement agencies are responsible for enforcing criminal statues, we feel the current system should remain intact.

BOARD OF DIRECTORS

Sheriff Belvin Bergeron
Port Allen Louisiana

Sheriff Jerry D. Brooks
Oregon Illinois

Sheriff Johnny Mack Brown
Greenville South Carolina

Sheriff Dale Carson
Jacksonville Florida

*Sheriff L. G. Daniel
Greenwood South Carolina

Sheriff John Duffy
San Diego California

Sheriff Daniel Figel
Fort Wayne Indiana

Sheriff Ken Goin
Albany Oregon

Sheriff Bill Hutson
Marietta Georgia

*Sheriff John Lenhart
Sidney Ohio

Sheriff Philip H. McKelvey
Cambridge Maryland

Sheriff Theodore Meekma
Juneau Wisconsin

Sheriff James Murphy
Newport Vermont

*Sheriff Frank Policaro
Beaver Pennsylvania

*Sheriff John Stark
Nevada Iowa

Sheriff Fate Thomas
Nashville Tennessee

Sheriff Dan Tihonovich
Pueblo Colorado

Sheriff Ralph Tyson
Greenville North Carolina

*Sheriff Charles Von Wald
Rochester Minnesota

Sheriff Carl Wells
Redford Virginia

Sheriff Richard Wille
West Palm Beach Florida

Ex Officio Members
All Past Presidents

*Member of the Executive Committee

The Honorable Mark Andrews
June 23, 1986
Page 2

If, however, the Congress is going to overrule state laws and allow Indian reservations to establish gambling casinos, we feel that the sheriffs have a responsibility to work with you. I know you would agree that current proposals lack a regulatory system that will minimize the victimization of Indians at the hands of unscrupulous management companies. It is the management companies that pose the risk of criminal infiltration and subsequent fraud perpetrated upon the tribal council. I believe that we can find a way to regulate the management companies themselves in their operation in the interest of protecting the tribal council and the non-Indian player as well as those persons who might wish to invest in the management company. That kind of regulation can best be done at the local level.

I met with Mr. Peter Taylor of your staff after the Hearing to discuss the concerns of law enforcement. This was a very productive session, and I would welcome another meeting to fully develop these ideas. I look forward to your positive response.

Very truly yours,

John F. Duffy
Chairman
Law and Legislative Committee

JFD/SPK:mcp

cc: L. Cary Bittick

KICKAPOO TRIBE OF KANSAS

R. R. 1 Box 157A

HORTON, KANSAS 66439

Phone: 913/486-2131

July 8, 1986

The Honorable Mark Andrews
Chairman, US Senate Select
Committee on Indian Affairs
838 Hart Office Building
Washington, D. C. 20510

Dear Senator Andrews:

I am writing to urge that the Select Committee move as quickly as possible to mark-up and ultimately to enact adequate Indian Gaming Regulatory legislation.

There appears to be universal agreement that a comprehensive legislative scheme does not exist and that it is Congress' perogative to determine the scope of a gaming regulatory system. While there is not a complete consensus among all the tribes, there is very strong support for the regulatory scheme underlying H.R. 1920. I believe that with some modifications and the inevitable process of negotiation and compromise, an honorable piece of legislation can be enacted. Before this Congress draws to a close, I urge you to take whatever steps are necessary to pass this legislation.

I thank you for your support you have provided Indian people these many years, first as a Congressman and then as Senator from North Dakota and as Chairman of the Senate Select Committee on Indian Affairs.

Sincerely yours,

Fred Thomas

Fred Thomas
Chairman
Kickapoo Tribe in Kansas

Oneida Tribe of Indians of Wisconsin

Post Office Box 365

Phone 839-1260

Oneida, WI 54155

Oneidas bringing several hundred bags of corn to Washington's starving army at Valley Forge after the colonists had consistently refused to aid them.

Because of the help of this Oneida Chief in cementing a friendship between the six nations and the Colony of Pennsylvania, a new nation, the United States, was made possible.

JUL 24 2 30

July 21, 1986

Mr. Pete Taylor, Counsel
Senate Select Committee on Indian Affairs
Room SH 838
Hart Senate Office Building
Washington, D.C. 20510

RE: Mark Up of H.R. 1920

Dear Mr. Taylor,

This is to inform you on behalf of the Oneida Tribe, of our concern regarding the above bill. As you are aware, the Oneida Tribe is the largest fully tribally owned and managed gaming operation in the United States. Our specific concerns are that any proposed amendments to H.R. 1920 that were accepted in the House of Representatives work to protect the Oneida Bingo Enterprise.

It is the position of the Oneida Tribe that Class II gaming as defined in H.R. 1920 remain the same. We feel that any changes to the classification definitions should be limited to Class III gaming which includes; animal, pari-mutual, machine and casino gaming. It is that area where state interests may be acknowledged and addressed by the Commission.

A second concern regards the composition of the Commission itself. We feel that the chairman of the Commission should be approved by the entire Senate. We also feel that five (5) members, not three (3), should be Indians selected or nominated by tribes with gaming interests.

A third area of concern regards management contracts. We believe where problems have been found in tribal gaming operations, they have occurred where the tribe contracts with an outside management firm to operate such a game. It is rational therefore, that tribes in most need of protection are those with such management agreements.

Mr. Pete Taylor, Counsel
July 21, 1986
Page 2

Finally, we are opposed to assessments that presently provide for two and one-half percent (2½%) of the annual gross gaming revenues. Assessments should be related to the services required by the Commission, i.e. background checks for management companies and other related costs. Further, we believe the limit should be not more than one percent (1%).

The Oneida Tribe, in all other respects is generally supportive of the suggested mark up amendments proposed by the National Gaming Association. The Oneida Tribe is totally opposed to S. 2557, Administration Bill.

If you have any questions, please contact this office or the Triba Attorney's office (414) 869-2345. Thank you.

Sincerely,

ONEIDA TRIBE OF INDIANS OF WISCONSIN

PURCELL POWLESS, Chairman

PP/rp

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

JAN 2 1986

JAN 1986
RECEIVED
GILA RIVER INDIAN
COMMUNITY

Honorable Donald R. Antone, Sr.
Governor, Gila River Indian
Community
P.O. Box 97
Sacaton, Arizona 85247

Dear Governor Antone:

I am writing to inform you of my decision to withdraw approval of the lease, management agreement and development agreement between the Gila River Indian Community and C.A.H.K., Inc., relating to a pari-mutuel jai alai enterprise. These documents were approved by the Phoenix Area Director on January 21, 1985.

I am greatly concerned that the Gila River Community may have construed the Area Director's approval as concurrence by the Department in the view that the proposed jai alai operation would fall outside the scope of the criminal prohibitory laws of the State of Arizona. In fact, it is our view that pari-mutuel jai alai is prohibited by the laws of Arizona. As you are undoubtedly aware, the Secretary wrote to the Governor of the Santa Ana Pueblo on August 6, 1985, about the Pueblo's proposed pari-mutuel dog racing enterprise. I enclose a copy of that letter, in which the Secretary expressed his view that the Pueblo's proposed enterprise would violate the Assimilative Crimes Act, 18 U.S.C. § 13, because the activity is prohibited by the criminal laws of New Mexico. The legal issues raised by the Gila River Community's proposal are substantially identical to those raised by the Santa Ana Pueblo's proposal, and therefore the analysis contained in the Secretary's letter is applicable here as well. Moreover, the Attorney General of Arizona has taken the position that pari-mutuel jai alai is prohibited by the laws of Arizona. The policy of deference to State Attorney General interpretations of state gambling laws which was announced in the Secretary's August 6 letter is therefore applicable here.

I am also concerned that the Gila River Community may be proceeding with an enterprise that almost certainly would be prohibited under any gambling regulatory legislation which may be enacted by Congress. The Department of the Interior and the Department of Justice have recommended to Congress that Indian gambling operations other than bingo (and social and ceremonial gambling) be subjected to state regulation. We have advised

EXHIBIT "B"

Congress that we affirmatively support bingo as an economic opportunity for tribes but that we view the potential law enforcement problems surrounding other forms of gambling as serious enough to outweigh the economic benefits to tribes. H.R. 1920, as ordered reported by the House Interior Committee on December 11, although it does not adopt the Administration recommendation favoring state regulation of non-bingo gambling, does provide that a National Indian Gaming Commission would regulate this kind of gambling in a manner identical to that of the states. Under this bill, as under the Administration proposal, pari-mutuel jai alai would not be permitted on Indian reservations in Arizona. I believe it is extremely unlikely that Congress will enact a bill with provisions for non-bingo gambling which are less stringent than those contained in the bill reported by the House Interior Committee. Because it is my view that the Gila River Community's proposed jai alai enterprise is prohibited under current law by the Assimilative Crimes Act and would also be prohibited by any gambling regulatory legislation which Congress may enact, I feel constrained to withdraw the Area Director's approval in order to remove any public perception that this Department may believe that the proposed enterprise would be in conformity with federal law and in order to encourage the Community to abandon its non-viable jai alai enterprise and redirect its energy and resources toward other projects which have some prospect of success.

I regret any inconvenience which the Department's past and present actions may cause the Community. If I may be of any assistance in helping the Community make alternate plans, please let me know.

Sincerely,

Assistant Secretary--
Indian Affairs

Enclosure

United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
PHOENIX AREA OFFICE
P.O. Box 7007
Phoenix, Arizona 85011

IN REPLY REFER TO:
Tribal Operations
241-2314 COMM.
261-2314 FTS

AUG 12 1985

AUG 1985
Received
Law Office

AUG 1985
RECEIVED
GILA RIVER INDIAN
COMMUNITY

Through: Superintendent, Pima Agency

Mr. Donald Antone

Governor, Gila River Indian
Community

Dear Mr. Antone:

We are in receipt of Ordinance No. GR-02-85 which was enacted on April 3, 1985, adopting a gaming ordinance entitled "Gaming Activities 'Operation of Jai Alai and pari-mutuel wagering and other gaming activities.'"

An ordinance entitled "Ordinance Governing Operation of Jai-Alai and Pari-Mutuel Wagering" was attached to Ordinance No. GR-02-85.

The Gila River Indian Community Council enacted said ordinance by various powers contained in Article XV, Section 1(a) of the community Constitution as well as other powers contained in Section 1(b) of that same Article. Powers under Section 1(b) are subject to Secretarial review. In the Superintendent's April 29 transmittal, he made several comments relative to the ordinance. However, the Superintendent did not properly approve or disapprove the ordinance as specified in Article XV, Section 2. Rather, all he did was recommend approval of the ordinance. Because the Superintendent did not properly take action on the ordinance as prescribed by the Tribe's Constitution, the documents adopted by GR-02-85 are not properly before us for action and have no force or effect. On the other hand, had the enactment been properly processed, the Superintendent's approval would be rescinded. The reasons that we would consider rescinding the ordinance is:

By the official policy statement of the Secretary of the Interior issued for release on August 7, 1985, he stated: "where a question arises as to whether proposed Indian gambling activities violate federal criminal law, such as the ACA, this Department, absent further, careful consideration, will not necessarily accept the criminal-prohibitory/civil-regulatory distinction articulated by some

EXHIBIT "A"

courts where the issue is the right of States to enforce their own criminal laws as to activities on reservations. To the extent that the issue of violation of federal criminal law, such as the ACA, turns on a proper construction of State criminal law, this Department normally will defer to the written opinion of the State Attorney General as to construction of State law, unless it appears that such opinion is sham or plainly unsupportable; however, the Department recognizes that judicial review of its decisions based on such deference should be available under applicable law governing judicial review."

In addition, in a Department of the Interior News Release also issued on August 7, 1985, the Secretary issued a statement regarding the Pueblo of Santa Ana in New Mexico and its attempt to conduct pari-mutuel wagering on greyhound dog races on reservation land.

The Secretary stated that attempts by Indian tribes to engage in gambling operations such as pari-mutuel wagering that are in conflict with State laws could jeopardize Indian bingo enterprises already in existence on many reservations across the country.

The Secretary also stated that despite the laudable objectives he could not approve any gambling operation that would be in conflict with federal laws.

For the above reasons, we would not approve an ordinance that would appear to be in conflict with an official policy of the Department of the Interior. ✓

Sincerely,

James H Stevens

Area Director

Enclosure

CITY OF DULUTH
OFFICE OF THE MAYOR
[illegible]
[illegible]

John A. Fedo
Mayor

July 9, 1986

The Honorable Mark Andrews, Chairman
U.S. Senate Select Committee on
Indian Affairs
838 Hart Building
Washington, D.C. 20510

RE: Indian Gaming Legislation

Dear Senator Andrews:

As the Mayor of Northern Minnesota's largest city and neighbor to several Indian reservations, I am writing to urge that the select committee mark-up and pass as soon as possible legislation regulating Indian Gaming. I recommend to your committee that it mark-up and enact H.R. 1920. I make this recommendation because H.R. 1920 is the one piece of legislation that recognizes the importance of tribal sovereignty and self-determination in its regulatory scheme. I also understand H.R. 1920 to have the support of the majority of the tribes that are currently involved with gaming within their jurisdictions.

The importance of tribal sovereignty and self-regulation in the implementation of any legislative scheme cannot be underestimated. Those tribes in my region that have been most able to exercise their sovereignty and engage in self-regulation are the ones that have been most able to improve their local economies and meet the needs of their residents, Indians and non-Indians alike. The tribes that have not been able to exercise their sovereignty are the ones who have made the least progress in improving the affairs of their people.

The relationship between tribes and non-Indian governmental bodies should be based on mutual respect for the rights and obligations of each. The City of Duluth has recognized that through joint-ventures, cooperative agreements, partnerships and other forms of mutually beneficial agreements, relationship with tribes can be for the greater benefit of all. These agreements could not occur if the tribes were not sovereign governmental bodies possessing powers of self-regulation. The City of Duluth's most recent agreement with one tribe, the Fond du Lac Band of Lake Superior Chippewa, provides for the extension of their reservation to land within the City of Duluth and the creation of mutually beneficial economic activities, including gaming. It is this sort of joint project between Indian and non-Indian governments that Congress encouraged when it passed the Self-Determination Act, P.L. 93-638, and that the President encouraged in his policy statement on Indian affairs mandating that the relationship between Indians and non-Indians be on a government to government basis.

Page 2
July 9, 1986

I again urge you to support enactment as soon as possible of H.R. 1920 as the best balanced legislative approach between federal regulation and tribal self-government that protects Indian sovereignty and the Federal interest.

Sincerely,

John Fedo
Mayor
City of Duluth

kr

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL

STANLEY D. STEINBORN
Chief Assistant Attorney General

FRANK J. KELLEY
ATTORNEY GENERAL

LANSING
48913

July 1, 1986

Honorable Mark Andrews
United States Senator
Chairman, Select Committee on Indian Affairs
838 Senate Hart Office Building
Washington, DC 20510

Re: S 2557, The Indian Gambling Authorization and Regulation Act of 1986

Dear Senator Andrews:

We appreciate the Committee's decision to hold the hearing record on the above legislation open through July 1, 1986 in order that additional commentary may be placed on the record.

Attached is a photocopy of a letter dated May 13, 1986 addressed to Senator Riegle. An identical letter was sent at the same time to Senator Carl Levin. These letters express my views on the general subject of "legalized gambling".

I emphasize that my position previously stated has not changed. My first preference would be to have neither more gambling nor more legislation.

However, should the Congress deem legislation in this area to be appropriate, I consider S 2557 to be preferable in many respects to HR 1920 as passed by the United States House of Representatives.

S 2557 regulates only the game of Bingo. It leaves "social or ceremonial" gambling, involving only tribal members, unregulated or regulated as the tribes see fit. As to all other forms of gambling, state criminal and regulatory laws are assimilated into Indian country and new federal criminal sanctions are enacted.

The regulatory structure is preferable to that embodied in HR 1920. Under S 2557, the commission consists of three members, two appointed by the Secretary of the Interior and one appointed by the Attorney General of the United States. That structure would prevent domination by the segment of society which is regulated.

I regard S 2557 to be deficient in two respects and urge that attention be given to curative amendments before it is passed by the Senate.

My first concern pertains to the overbreadth of the exception for "social or ceremonial gambling". This language is not limited by any definitions in the bill. I would note that in this respect S 2557 is weaker than HR 1920 to the extent that HR 1920 refers to gambling of this type as that which involves prizes having only "nominal value".

I believe that the generality of the exception for social or ceremonial gambling creates an opportunity for total evasion of the act as to types of gambling other than Bingo. It would be possible for a tribe to set up blackjack tables, poker games, or similar casino gambling games, allow large pots or prizes, declare that the games are "social" (without having to tie them to previous "ceremonial" games) and admit non-Indian patrons to the games as "honorary" or "temporary" tribal members.

I recommend corrective amendments of this type:

1. The term "social" adds very little and should either be dropped or should be used conjunctively with the term "ceremonial".

2. Only those games which were a part of the aboriginal culture of the particular tribe on whose reservation the activity would be taking place would be included within the term "ceremonial gambling" or "social and ceremonial gambling".

3. Specific dollar limits should be placed upon the value of each prize and of the aggregate value of all prizes given within a 24-hour period (the term "nominal value" is not sufficiently definite and should not be borrowed from HR 1920).

4. Only persons who are members of the particular tribe on whose reservation the activity is taking place and have been members of that tribe for at least the five-year period immediately preceding the date of the activity may be participants in games falling within the exception.

My second concern pertains to that portion of Section 501 which delays the effective date of the new criminal sanction enacted by Title IV to October 1, 1987.

The section-by-section analysis at page S 7594 (Col. 3) of the Congressional Record for June 16, 1986 indicates that this exception is intended to allow tribes which are presently operating Bingo games to continue to do so without a license until October 1, 1987 while the commission is establishing rules and other procedures for the licensing of Bingo under Title III and is issuing licenses.

I have no quarrel with that objective, but suggest that the effect of delaying criminal penalties is far broader. As to forms of gambling other than Bingo, the delay provisions in effect create a "prosecution free period" which will likely extend for more than one year.

What is needed is a carefully tailored exception for Bingo, as defined in Section 301(a)(1) of the bill, either in Section 501 of the bill or in the substance of 18 USC 1166 as added by Section 401 of the bill.

Thank you for your consideration of the above.

Very truly yours,

Frank J. Kelley
FRANK J. KELLEY
Attorney General

Attachment

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL

STANLEY D. STEINBORN
Chief Assistant Attorney General

FRANK J. KELLEY
ATTORNEY GENERAL

LANSING
48913

May 13, 1986

Honorable Donald W. Riegle, Jr.
Member of Congress
SD 105 Dirksen Building
Washington, DC 20510

Dear Congressman Riegle:

I am writing to you and Senator Levin to record my opposition to HR 1920 which, if enacted, would be known as the "Indian Gaming Regulatory Act."

The most recent version of the bill with which I am familiar is the form in which the bill was passed in great haste under suspension of rules by the United States House of Representatives on April 21, 1986 (132 Congressional Record No. 50). However, my views are also expressed with regard to the general subject matter of "legalized gambling."

While it is easy to categorize HR 1920 as an "Indian law" issue or an "Indian economic self-determination" issue, I respectfully differ. In my view HR 1920 involves "expanded legalized gambling."

I recognize that the "diluted" version of the bill ultimately passed by the House purports to immediately legalize only intratribal ceremonial gaming, called Class I Gaming, and "bingo" and similar games, called "Class II Gaming" and purports to leave "Class III Gaming", consisting of all other kinds, including casino, wagering on horse and dog races, and the like, in a state of apparent "limbo".

Nevertheless, I view this bill as the driving wedge for the ultimate legalization of "Class III Gaming" and thus the vehicle for expanded "legalized gambling". The bill calls for a four-year "moratorium" on Class III Gaming [section 3(c)] so that a study may be conducted by the General Accounting Office during the first two years of the moratorium [section 21(a)] leaving the Congress two remaining years to enact further legislation concerning Class III Gaming. The obvious tone of the study is not whether Class III Gaming should be legalized on Indian lands at all, under any regulatory scheme, but rather to select among three possible regulators of that type of activity (the tribes, the states, or the United States).

I remain opposed to "legalized" gambling of any type. "Regulated" gaming (whether the regulation shall be by the federal government, by the states, or by the tribes themselves) is not an acceptable societal risk and no gambling at all would be far preferable.

I therefore request that you oppose enactment of HR 1920 in its current form and oppose enactment of any other federal legislation which would expand opportunities for persons to engage in gambling activities without being subjected to the sanctions imposed by state penal laws.

Should the Congress nevertheless see fit to legislate in this subject area, I would urge that very close attention be given to the particulars of the regulatory structure. I would point out that Section 5(b) of HR 1920 provides that a majority (five) of the eight member National Indian Gaming Commission shall be appointed by the Secretary of the Interior from lists submitted and approved by a majority of the tribes who at that time are engaged in or are regulating gaming activities. An effective regulatory body should not be numerically dominated by the segment of society which it purports to regulate.

Coming, as it does, from the Attorney General of a state which engages directly with the citizens in gambling activities to raise government revenues and which authorizes other gambling activities and impose taxes on such activities, this position may meet with a certain level of skepticism. It is therefore appropriate that I address those subjects briefly.

At the outset, I would note that I have consistently opposed expansion of state involvement in the gaming industry and our legislature has declined to enact bills that would authorize regulated "casino gambling". Consequently, Michigan's historical involvement in gambling is far less than the broad category of "Class III gaming" defined by Section 19(5)(c) of HR 1920, which I predict ultimately will be legalized by future congressional enactments.

Michigan's first involvement in legalized gambling was legislation authorizing pari-mutuelized wagering on horse racing. The first such act was 1933 PA 199, MCL 1948, §§ 431.1-431.25 which took effect June 28, 1933. I was only eight years old at the time.

Wagering on horse racing had been entrenched for nearly three decades when I first took office on December 28, 1961. Nevertheless, I have consistently opposed efforts to legalize other forms of racing and associated wagering (such as dog racing) and have opposed proposals that would expand opportunities to wager on horse races such as off-track betting and the placing of wagers by telephone.

The other area of pervasive legalized gambling in Michigan is the program conducted by the Michigan Bureau of State Lottery.

When I took office as Attorney General the state constitution in effect at that time precluded the legislature from enacting laws authorizing lotteries or the sale of lottery tickets; Const 1908, art 5, § 33. The new constitution which took effect on January 1, 1964 contained a comparable provision; Const 1963, art 4, § 41.

In May of 1972 the Michigan populace saw fit to amend Const 1963, art 4, § 41 at a statewide election, a position which I opposed at the time. The popular will having been expressed, the legislature was quick to enact enabling legislation which continues to this day as 1972 PA 239, as amended, MCL 432.1 et seq; MSA 18.969(1) et seq.

I remain opposed to the state's having a lottery and on several occasions have attacked the advertising program of the lottery because, in my view, it overemphasizes the large prizes to be obtained by a fortunate few and does not adequately disclose the long odds against winning anything at all, even a prize of slightly more than nominal value.

As a constitutional state officer I am obligated to provide legal services to all of the components of state government, including to those with whose fundamental missions I am in disagreement.

It should be obvious that any legalized gaming on Indian reservations will be an economic success only if patronized in large measure by citizens of the State of Michigan who do not reside on the reservation and by tourists visiting our state. The economic impact of heavy gambling losses and the need to resort to non-traditional lending sources can create law enforcement problems and expenses and other adverse social consequences that should be avoided while the opportunity to avoid them still exists. Therefore I urge you to oppose HR 1920.

Thank you for your consideration of the foregoing. If you have further questions, do not hesitate to contact me.

Very truly yours,

FRANK J. KELLEY
Attorney General

MR. MIKE AVILA
Governor
MR. ALCARIO CHAVEZ
Lt Governor
MR. JOSE R. TRUJILLO
Treasurer

PUEBLO OF SANDIA

Box 6008
Bernalillo, New Mexico 87004
(505) 867-2876/5021

July 10, 1986

Honorable Mark Andrews, Chairman
Select Committee on Indian Affairs
SH-838 HART Senate Office Building
Washington, DC 20510

Dear Senator Andrews:

This is a request to enter into the written record for the June 17 Committee hearing on "legislation to provide regulations for Indian reservation gambling," (HR1920, S902, S2557), the following remarks on behalf of Sandia Pueblos' tribally-controlled bingo enterprise. Our enterprise, Sandia Indian Bingo, in conjunction with our outside investors and management firm (Sandia Indian Management Company), jointly testified at your June 1985 hearings on this legislation and in favor of passage for HR1920 with modifications.

Sandia Pueblo's support for Senate passage of HR1920 (as referred to the Select Committee from the House on 22 April 1986) while guarded, continues. Specifically, we urge your Committee to report HR1920 without adopting any states' jurisdiction provisions that are embodied in S2557, as introduced to your Committee June 16 by Senator Laxalt (R.-NV).

Sandia Pueblo supports HR1920 including the House passed CLASS III moratorium, on gaming other than bingo or ceremonial, and the U. S. Comptroller General Report requiring subsequent Congressional action stipulating a regulatory schema for this CLASS III gaming.

Our support is guarded, just as it is from House members who voted for HR1920 passage in April, and as we believe it to be by other tribes with ongoing bingo operations; those which are legal under existing federal law as interpreted by federal court rulings barring state and local governments from prohibiting high-stakes, Indian reservation bingo.

Our support for HR1920 is predicated on your Committee reporting a bill without states' jurisdication over any reservation gambling. To secure Committee support necessary to pass legislation establishing only federal regulatory standards for Indian reservation gambling, we urge adoption of the House passed CLASS III moratorium for all forms of gaming other than ceremonial and bingo, as that is defined in HR1920.

We believe legislation with this House passed compromise providing federal regulation of reservation bingo, and which does not set a precedent for the ceding of future reservation jurisdiction to the states, can gain the same bi-partisan support for passage that prevailed in the House. This contention is supported by the Congressional Record remarks of Congressman Coelho (D.-CA., 15th), who originally proposed states jurisdiction over so-called CLASS III gaming during Interior Committee mark-up on HR1920, and, likewise, those of Congressman McCain (R.-AZ., 1st), who "...With some reluctance, urge(d) my colleagues to support the compromise HR1920," and "...I believe this is the best compromise that tribes or the States can ask at this time...". (See H2021, April 21 Congressional Record attached.) Congressman Coelho noted in his remarks supporting HR1920 passage, the "...I offered a compromise to place a four-year moratorium on CLASS III gaming on Indian lands," and, "This compromise on CLASS III gaming has been endorsed by the American Greyhound Track Operators Association as well as the American Horse Council...". (See H2020 & 2019 April 21 Congressional Record attached.)

Additionally, Sandia Pueblo concurs with oral remarks by Senator Domenici (R.-NM) during your June 17 hearing, where we understand the Senator states, in part, "...I hope we will be able to remove any cloud over bingo by validating this by Congress," and, "For Indians, bingo is essential to reservation success and this" (gambling) "does not run into conflict with state law as does dog racing, horse racing and casino."

Sandia Pueblo also concurs with Senator Domenici's urging that the Committee, and this Congress, pass legislation providing federal regulations for reservation bingo, which, we add, is such regulation as presently found in HR1920. Insofar as other forms of gambling, as defined under the House passed, CLASS III moratorium, we also understand that Senator Deconcini's (D.-AZ) hearing exchange with New Mexico Attorney General Bardacke, included that Senator's agreement with the Attorney General, as follows, "But dog racing is illegal in New Mexico; I believe it should be regulated by the state."

Therefore, Sandia Pueblo urges the Select Committee on Indian Affairs to report the HR1920 compromise legislation as referred to the Senate on April 22. And, insodoing, not adopt the S2557 proposed definition for bingo nor adopt the provision for states jurisdiction over all other gambling forms. As already passed, HR1920 is agreeable to both proponents of federally-regulated, high-stakes bingo and to opponents of pari-mutual type gambling, on Indian reservations, that is not regulated by the states. (See Congressman Coelho Congressional Record remarks, H2020 dated April 21, attached).

Honorable Mark Andrews, Chairman
Comments on HR1920, S902, S2557
July 10, 1986
Page 3

Sandia Pueblo also supports, in Select Committee on Indian Affairs passage of HR1920 legislation, two amendments proposed by the Southern Pueblos Governors Council written statement submitted at your June 17 hearing. Those two amendments are: (1) make Indian Gaming Commission members Presidential appointees subject to Senate confirmation; and, (2) modify the assessment schedule to read as follows: "the federal government shall provide 50% of the commission budget with gaming tribes being levied the remaining 50%, but not to exceed two and one-half percentum of the gross revenues from each Indian gaming activity regulated pursuant to this Act."

Thank you for your consideration of these remarks, and recommendations for modification to HR1920 and subsequent Senate passage of the "Indian Gaming Regulatory Act."

I again urge you to take necessary steps to report HR1920 from your Committee in time for overall Congressional passage of this legislation to occur before an early October 1986 adjournment target date prevents passage of legislation necessary to establish federal regulatory standards for this Indian reservation gambling.

Sincerely,

Gov. Mike Avila

Mike Avila
Governor

MA:mjm

Attachment: 21 April 1986 Congressional Record inserts

cc: Honorable Pete V. Domenici (R.-NM)

Mr. UDALL. Mr. Speaker, I yield 3 minutes to the distinguished gentleman from Ohio [Mr. SEIBERLING].

Mr. SEIBERLING. Mr. Speaker, I want to commend the gentleman from Arizona [Mr. UDALL] for bringing up this bill. There are no Indian reservations in Ohio, and yet this bill is of interest to every single Member from every single State in the Union.

I discovered somewhat to my surprise a few years ago that it is possible for an Indian tribe to buy land in another State far from their normal geographic location and establish a bingo operation on that land. It can be very small, but it is still considered a reservation that is held in trust for the tribe. It is exempt under present law from local ordinances and State laws that regulate gambling throughout the rest of the State or in the particular local jurisdiction.

So, having found that, it seemed to me that this bill presented a very excellent opportunity to make it clear that on that type of operation where the Indian land is remote or separate from an actual Indian reservation, it cannot supersede State and local law. Accordingly, the bill provides that class II and class III gaming shall be unlawful on lands acquired by the Secretary after December 4, 1985, if the lands are located outside the boundaries of such tribe's reservation, but that this prohibition shall not apply if the Governor of the State, the State legislature, and the governing bodies of the county and municipality in which such lands are located approve the operation. So this retains State and local control over nonreservation Indian gambling, and I think that is very important to every single State, not only because it is important from the standpoint of preserving the opportunity of a State to regulate gambling activities within its own borders on lands which are not on an Indian reservation, but it is important because certain elements that are undesirable otherwise could take over and you would in fact have a gambling operation where Indians were getting some benefits, but since there was no State or Federal regulation, there could be organized crime or some other group skimming off the majority of the benefits, and also bringing undesirable activities into your State.

This bill is extremely important to every single State in the Union that feels that it is desirable to maintain State and local control over gambling operations. I again want to commend the chairman and the other members of the committee for the hard work they have done on this legislation.

Mr. UDALL. Mr. Speaker, I yield 5 minutes to the gentleman from Nebraska [Mr. BEREUTER].

(Mr. BEREUTER asked and was given permission to revise and extend his remarks.)

Mr. BEREUTER. Mr. Speaker, I begin by thanking and commending my colleague, the very distinguished and able chairman of the Committee on Interior and Insular Affairs, the gentleman from Arizona [Mr. UDALL], and all the members of the committee that have worked to bring us this compromise legislation. I think it is very necessary and important legislation.

Accordingly, therefore, Mr. Speaker, today I rise in support of H.R. 1920, the Indian Gaming Control Act, and to address two specific matters regarding the legislation.

To begin, this Member wishes to bring to the attention of the House a provision in the legislation that came about because of a plan developed by an Indian tribe in my district in Nebraska. Briefly, this tribe intended to purchase a piece of property some 75 miles from the reservation, within the city limits of a medium-size town also in my district. The tribe then intended to request that the Secretary of the Interior grant this 22-acre parcel trust status, for the purpose of establishing an Indian bingo operation.

Mr. SEIBERLING. Mr. Speaker, will the gentleman yield?

Mr. BEREUTER. I am pleased to yield to my colleague, the gentleman from Ohio [Mr. SEIBERLING].

Mr. SEIBERLING. Mr. Speaker, in the case that brought this to my attention, which was a proposal to establish a similar operation in the county adjoining my own, the land was 1,200 miles from the reservation of the tribe, and the acreage that they were going to acquire was only 8 acres and was purely for a gambling operation, and that really got my attention in a hurry.

☐ 1315

Mr. BEREUTER. Mr. Speaker, I thank my colleague for that example. I became aware of that example, too, and I believe it set the long-distance record. We are indeed a creative people—all of us.

This Member was very opposed to such a plan to create lands by acquisition strictly for the purpose of gambling activities. While this Member recognizes that economic development is one of the reasons used to justify the addition of new trust lands by the Secretary of the Interior, I most emphatically believe that gambling should not be considered an appropriate activity to justify an extension of trust status to land outside the reservation area. Not only would such an extension have to be considered bad public policy, but the potential law enforcement problems and demonstrated opposition were both considerable. Therefore, this Member introduced legislation which was then considered by the committee during their hearings on Indian gaming. My legislation prohibits any tribe from acquiring land that is not contiguous to the reservation for the specific purpose of establishing a gaming operation. Our distinguished colleague from Ohio, Mr. SEIBERLING, offered the provision in committee, and it is included in the legislation before us today. It is an important protection, this Member believes, for the practice would create practical problems that could not, in the long run, be easily addressed. This Member wishes to make it clear, however, that he does not oppose the creation of gaming operations on the reservation under proper regulations and management.

This raises another matter, Mr. Speaker, which I will take only a minute to discuss. While this Member recognizes that there is a legitimate need to address the issues associated with nonregulated gaming activities, including those that are operated by Indian business persons on the reservation, there are some concerns about tribal sovereignty that must be addressed.

Mr. Speaker, while this Member does not believe that the legislation which will emerge from the other body on Indian gaming will necessarily be less restrictive than on legitimate matters of Indian sovereignty, it is my hope that there will be an opportunity in the conference to look again at the impact of House actions on the rights of tribal governments.

Thank you.

Our distinguished colleague, the gentleman from Ohio [Mr. SEIBERLING] offered the provision in the committee. It is included here today.

Mr. UDALL. Mr. Speaker, I yield 3 minutes to the gentleman from California [Mr. COELHO].

Mr. COELHO. Mr. Speaker, I thank the distinguished chairman of the committee for yielding time to me.

Mr. Speaker, I am pleased to be among those who are supporting the bill that is before the House today. We have come a long way from the bill that was originally reported from the House Interior Committee last December and I appreciate the efforts made by the chairman of the committee to work with me in resolving my concerns.

There is no doubt that something needs to be done to regulate gaming activities that take place on Indian lands. To allow unrestricted Indian gambling to continue would be an injustice to the tribes, to the States, and to the citizens of this Nation. We have to balance competing rights, duties, and responsibilities, and come up with a fair solution which protects everyone.

I believe this bill accomplishes the objective of providing some regulation for bingo, which is now taking place on Indian lands. It also gives us an opportunity to look at the proper method for regulating other forms of gambling, which for the most part are not found on Indian lands today.

When H.R. 1920 was reported from the Interior Committee, all class III gaming would have been under the regulation of the National Indian Gaming Commission. I had serious doubts about the ability of the Commission to regulate class III gaming with the current budget situation, and with the potential size of the job facing them. I felt the States would have been the more appropriate entity to regulate any class III gaming operations since they are doing so currently in each State.

However, in an effort to give everyone additional time to explore the issue of regulating class III operations, I offered a compromise to place a 4-year moratorium on class III gaming on Indian lands. During the moratorium, a study will be undertaken by the General Accounting Office to determine who might be the best regulator of class III gaming—the tribes, the States, or the United States.

The study will consider the benefits and problems from such regulation, and will also look at how successful the Commission is in regulating class II bingo. Additionally, we have asked for possible alternatives that exist for regulating class III operations, and a recommendation on the best alternative including the cost involved, and the staffing requirements.

In doing the study, GAO will be required to consult with the tribes, appropriate Federal agencies, State gaming control boards and regulatory bodies, and appropriate law enforcement officials. The study must be submitted to Congress within 2 years of the date of enactment, which will permit 2 additional years for Congress to take action on the recommendations.

Because there are a few existing games on Indian lands that could be considered class III operations, we have agreed to grandfather these operations in solely for the period of the moratorium. During the period of the moratorium, these operations will be subject to regulation by the national commission and will be forbidden from expanding into other forms of class III gaming than those they were operating as of January 1 this year. I will engage the chairman of the full committee on a colloquy to ensure that everyone understands the intent of the grandfathering provisions.

This compromise on class III gaming has been endorsed by the American Greyhound Track Operators Association as well as the American Horse Council.

I would like to express my appreciation to the chairman of the full Interior Committee for his efforts in forging a workable compromise. I also would like to thank the gentlewoman from Nevada [Mrs. Vucanovich], the gentleman from New Mexico [Mr. Richardson], and the chairman of the Rules Committee, Mr. Pepper, for their support in putting together a bill that would be acceptable to the House.

I would now like to ask a couple of questions of the chairman of the committee.

Mr. UDALL. I would be pleased to answer.

Mr. COELHO. Mr. Speaker, under the compromise that I and the gentleman from Arizona worked out on class III gaming, class III gaming in existence on January 1, 1986, would be grandfathered in under the 4-year moratorium if otherwise legal under existing law. Is it the understanding of the gentleman from Arizona that the protection afforded by the "grandfather" provision would not be available to a class III activity in operation prior to January 1, 1986, if that activity was subsequently determined by a final decision of a court to be illegal?

Mr. UDALL. If the gentleman will yield, that is my understanding.

Mr. COELHO. The compromise also contains language which provides that any class III activity which is grandfathered in retains that protection only to the extent that the activity keeps within the nature and scope that it had prior to January 1, 1986. It is my understanding that, under this language, any grandfathered activity will be limited to the number of separate operations which were in existence on January 1, 1986, and only that kind of gaming which was in existence on that date. In addition, this language would prevent any attempt to convert a class I activity in existence before January 1, 1986 to a class III operation. Is that the understanding of the gentleman from Arizona?

Mr. UDALL. If the gentleman will yield, that is my understanding.

Mr. STRANG. Mr. Speaker, I am pleased to yield 4 minutes to my colleague, the gentleman from California [Mr. Shumway].

(Mr. SHUMWAY asked and was given permission to revise and extend his remarks.)

Mr. SHUMWAY. Mr. Speaker, over the last several months, I have had a particular interest in the subject of Indian gambling. It was initially brought to my attention, sparked by my concern, when some of my constituents expressed their concern about the construction and operation of a high-stakes bingo parlor on a small Indian rancheria in northern California. The opposition ranged from traffic and sewage concerns—that is, the application of county ordinances, which were created by the construction of this bingo hall, some 1,200 seats in size—to claims of unfair competition with charitable organizations, and to one Indian woman's opposition to the "white man's" intrusion, as she described it, onto the reservation for profit.

As I investigated these concerns, however, I realized that they were but the tip of the iceberg and that nationwide there have been numerous efforts, some successful, by organized crime to gain a foothold in the potential lucrative Indian gaming business. Above and beyond my strong belief that gambling is not an appropriate revenue-raising activity, as it preys on those least able to afford it and it does give rise to the false impression, and indeed the immoral idea, that wealth can somehow be created without a commensurate degree of productive effort, I am persuaded that neither the Bureau of Indian Affairs nor Indian tribes themselves are able to adequately police the gaming operations and to prevent the subtle infiltration of organized crime. As the gentlewoman from Nevada has testified and indeed it came to light during the hearings on H.R. 1920, the participation of organized crime in gaming is a very sophisticated business. Nevada alone spends nearly $13 million a year just to enforce, investigate and audit its statewide gaming operations.

The authority to regulate non-Indian gambling is reserved for States, which I believe are best qualified to establish gambling regulations to meet the particular needs of their citizens. It is for this reason that I introduced legislation which would have required Indian tribes conducting gaming to comply with the same regulations that have already been established in the States in which they reside. I believe that particularly in the area of gambling the Federal Government would be wise to defer to the experience and the judgment of the States in which our native Americans live.

It seems to me, Mr. Speaker, that if indeed there is reason to regulate gambling because of the nature of the activity, then there is nonetheless reason to regulate it because it happens to be conducted by Indians, rather than non-Indian Americans.

Without question, there is no doubt that Indians need an economic boost to their tribal economies and even more desperately need to be independent of Federal subsidies. I applaud the tribes' innovative efforts to do so by way of gambling; however, I cannot support this bill, nor any attempt to give the Federal Government the decisionmaking authority for gambling, which is I believe a major purpose of H.R. 1920. Gambling in Indian country impacts Indians and non-Indians alike. Congress should therefore give the authority to regulate such activity to the division of Government best qualified to do so, and that is each individual State.

Mr. SEIBERLING. Mr. Speaker, will the gentleman yield?

Mr. SHUMWAY. If I have time, I am happy to yield.

Mr. SEIBERLING. Mr. Speaker, is the gentleman aware that without legislation at the present time an Indian tribe can buy land in his State or any other State and set up a gambling operation which will be totally exmept from any State or local control?

Mr. SHUMWAY. I am well aware of that problem. I heard the gentleman's testimony regarding that and I did introduce a bill to address that very problem.

I am not happy with the status quo, either, but I simply believe that H.R. 1920 falls short in addressing the entire range of problems, not just that one, but all the problems by the Secretary.

Mr. SEIBERLING. Well, it takes care of all the problems except those of new gambling on Indian reservations, which it seems to me shrinks it down to a very small area indeed. I think on the whole it is a great step forward.

Mr. McCAIN. Mr. Speaker, I rise in support of H.R. 1920, the Indian Gaming Regulatory Act. Since the fifth circuit judicial decision in Seminole versus Butterworth, Indian tribes have engaged in gaming operations, primarily bingo. In Seminole, the court ruled in keeping the general government-to-government relationship between tribes and the Federal Government, that Indian tribes could regulate gaming operations free of State licensing and State regulation. It formulated a civil/regulatory versus criminal/prohibitory reasoning. Simply stated, if a State regulates an activity a sovereign Indian tribe can also regulate that activity; but if the activity is strictly prohibited within the boundaries of the State that prohibition also applies to the Indian tribe.

H.R. 1920 is an honest attempt to join the conflicting interests of the State and the Indian tribes, with a goal of preventing unwanted criminal intrusion into any gaming operation. The Udall substitute before us today adopts a fine line between the conflicting interests in the case of bingo and bingo-type games—class II in the bill. However, because of the controversy surrounding the regulation of class III—parimutuels, lotteries, and so forth, H.R. 1920 now provides for a study of the issue. I believe this is the best compromise that tribes or the States can ask at this time. The GAO study will provide Congress with a fuller understanding of State concerns and of tribal rights. And, the 4-year moratorium of class III gaming in Indian country will help satisfy the Justice Department fears of rampant intrusion on the part of organized crime in Indian games.

I fully agree with the Justice Department concerns, however, I wholeheartedly disagree with their solution. The protections of all citizens must be balanced with tribal sovereign rights. I do not personally believe that gaming is the best economic solution to tribal problems, but in some instances it may be the only one. The protection of all citizens participating in Indian games is a Federal responsibility, that must not be pawned off to the States.

Traditionally, States and Indian tribes have been adversaries, as our committee hearings clearly demonstrated. State witnesses wanted State jurisdiction, regulation, enforcement, and taxation. However, no State witness testified that the State had a responsibility to Indian tribes for their health, welfare, or economic development. The Justice Department would like to abrogate their responsibility for law enforcement in Indian country and hand it over to the States for class III gaming operations. Logically, it follows that the Justice Department does not believe it has a responsibility in Indian country; which by many reports seems to be the actual case today. Many tribes have complained to me that even when they have caught criminals redhanded, the U.S. attorney has refused to prosecute. I hope that my colleagues will join me in the future in addressing the real issues about law enforcement responsibilities on Indian reservations.

Sovereign Indian tribes currently have the right to regulate activities within their boundaries, irrespective of State regulations except where Congress has expressly granted jurisdiction to the tribes. It is my belief that the GAO study will also reflect this understanding and will be the basis for new legislation 4 years hence. With some reluctance, I urge my colleagues to support the compromise H.R. 1920.

Mr. STRANG. Mr. Speaker, I have no additional requests for time, and I yield back the balance of my time.

Mr. UDALL. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The **SPEAKER** pro tempore (Mr. Bosco). The question is on the motion offered by the gentleman from Arizona (Mr. UDALL) that the House suspend the rules and pass the bill, H.R. 1920, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

II

99TH CONGRESS
2D SESSION

S. 2557

Entitled the "Indian Gambling Authorization and Regulation Act of 1986".

IN THE SENATE OF THE UNITED STATES

JUNE 16, 1986

Mr. LAXALT (for himself and Mr. HECHT) introduced the following bill; which was read twice and referred to the Select Committee on Indian Affairs

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A BILL

Entitled the "Indian Gambling Authorization and Regulation Act of 1986".

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Indian Gambling Authorization and Regulation Act of 1986".

TITLE II—FINDINGS AND PURPOSE

SEC. 201. The Congress finds that—

(a) in recent years, numerous Indian tribes have become engaged in or have authorized gambling activities in Indian country.

(b) this gambling is often not subject to State or Federal regulation because—

(1) State criminal laws are applicable in Indian country only to the extent that the Congress has provided by legislation that the States, rather than the Federal Government, should exercise jurisdiction over a particular subject matter;

(2) the Federal and tribal governments exercise criminal jurisdiction over crimes committed in Indian country, except in a few situations generally not related to gambling;

(3) Federal law often assimilates the laws of the States when there is no Federal statute on point; and

(4) several Federal courts have held that only State criminal laws are assimilated for enforcement by the Federal Government in Indian country, that State gambling enforcement statutes are regulatory laws which are not assimilated, and consequently the Indian tribes themselves have the exclusive right to regulate gambling activity which is not prohibited by Federal law and which is conducted in a State which does not, as a matter of public policy, prohibit such gambling activity.

(c) Most of the gambling authorized by the Indian tribes has involved the playing of bingo, typically for much larger stakes than those for which the game is played when operated by religious or charitable organizations under State regulation and control, and in an atmosphere often resembling that of a casino.

(d) Some Indian tribes have expressed an intention to authorize other forms of gambling including parimutuel wagering on horse and dog racing and on jai alai.

(e) While two States presently authorize casino gambling, and a number of States authorize parimutuel wagering and bingo, these activities are subject to strict regulation and control.

(f) Close and constant supervision is necessary to keep high stakes gambling free from the influence of organized crime, racketeers, and others who would attempt to gain access to the gambling operation and corrupt it for their own unlawful purposes.

(g) While bingo has provided considerable economic benefits to some Indian tribes, including a reduction in unemployment, enhanced self-sufficiency and strengthened tribal governments, some tribes are not able to provide the necessary type of supervision and control over their bingo operations.

(h) Existing Federal statutes do not clearly provide an adequate basis for regulating or controlling gambling in Indian country.

SEC. 202. The purpose of this Act is—

(a) to provide a statutory basis for the operation of bingo by Indian tribes free from State control or regulation, as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments, so that this source of revenue cannot be destroyed if subsequent Federal court decisions hold that State regulatory laws governing bingo are assimilated as Federal statutes and must be enforced in Indian country;

(b) to provide a statutory basis for the Federal Government to regulate bingo engaged in or authorized by an Indian tribe to shield it from organized crime and other corrupting influences, to ensure that the tribe rather than individuals are the primary beneficiaries of the bingo operation, and to assure that bingo is conducted fairly and honestly by both the operator and players;

(c) to provide clearly that gambling in Indian country (other than bingo and ceremonial or social gambling involving only tribal members) is regulated and controlled by State law and that violations of such

State gambling statutes in Indian country may be prosecuted in Federal as well as State court; and

(d) to allow tribes already engaging in or authorizing bingo to continue their operation for a reasonable time to comply with the provisions of this Act.

TITLE III—AMERICAN INDIAN BINGO COMMISSION

SEC. 301. DEFINITIONS.—(a) As used in this title—

(1) "bingo" means a game of chance (commonly called bingo or lotto) which—

(A) is played for prizes, including monetary prizes;

(B) is played with cards or other devices bearing letters or other designating symbols in one line, under each of which are numbers or other designating symbols, which the holder seeks to cover with objects, as the particular number or other symbol is determined by chance; and

(C) is won by the person who first covers a previously designated arrangement of numbers on such card or other devices.

The term does not include the game commonly known as "keno". It includes the game described in subparagraphs (A), (B), and (C) only when such a game is played by a gathering of persons, and does not include games commonly called "punch boards", "pull tabs", "instant bingo", or any other game which is played by revealing concealed numbers, letters, or other symbols on a card or other object to determine if the holder of such card or other object is entitled, or may be entitled, to a prize.

(2) "bingo establishment" means any premises licensed under the provisions of this title wherein or whereon bingo is conducted;

(3) "bingo employee" means any person employed by or connected directly with the operation of a bingo establishment including, but not limited to, employees of management contractors;

(4) "bingo license" means any license issued by the American Indian Bingo Commission for the operation of, employment by, or other connection with a bingo establishment;

(5) "Chairman" means the chairman of the American Indian Bingo Commission;

(6) "Commission" means the American Indian Bingo Commission established by section 302 of this title;

(7) "Commissioner" means a member of the American Indian Bingo Commission and includes the Chairman;

(8) "gross bingo revenue" means the total of cash received by a licensed bingo establishment from players for the playing of bingo, plus any credit extended to players for purposes of playing bingo, minus the total of any cash and the value of any merchandise given as bingo winnings or prizes;

(9) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians which is recognized by the Secretary as eligible for the special programs and services provided through the Bureau of Indian Affairs to Indians because of their status as Indians and as possessing powers of self-government;

(10) "individual licensee" means any person, other than a tribal licensee, to whom a valid bingo license has been issued;

(11) "management contract" means any agreement between a tribal licensee and another person or entity whereby such other person or entity agrees to operate or participate in the management of a bingo establishment licensed under the provisions of this title, or to operate or participate in the management of any activity carried on in such an establishment;

(12) "management contractor" means a party to a management contract other than the tribal licensee;

(13) "net income" means gross bingo revenue plus revenue from other sources in connection with the operation of a bingo establishment, minus reasonable expenses incurred in running a bingo establishment including payments to management contractors, if any;

(14) "reservation" means an area recognized or established by treaty, Federal statute, or Executive order for an Indian tribe and over which the Indian tribe has governmental jurisdiction. In Oklahoma, "reservation" means land held in trust by the United States for an Indian tribe;

(15) "Secretary" means the Secretary of the Interior; and

(16) "tribal licensee" means any federally recognized Indian tribe, or any organization established by such a tribe, which holds a valid bingo license permitting the operation of a bingo establishment.

SEC. 302. ORGANIZATION AND COMPENSATION.—(a) There is hereby established in the Department of the Interior a commission to be known as the American Indian Bingo Commission. The Commission shall be composed of three members, two of whom shall be appointed by the Secretary and be employees of the Department of the Interior, and one of whom shall be appointed by the Attorney General and be an employee of the Department of Justice. The Commissioners may be appointed without regard to the provisions of title 5, United States Code. The Commissioners shall have knowledge and ability in the areas of gambling regulation, law enforcement, and Indian affairs.

(b) The Commissioners appointed by the Secretary shall serve at the pleasure of the Secretary and may be removed at any time and without cause. The Commissioner appointed by the Attorney General shall serve at the pleasure of the Attorney General and may be removed at any time and without cause.

(c) The Secretary shall designate one Commissioner appointed by him to serve as Chairman. The Chairman shall coordinate all activities of the Commission.

(d) For the purpose of carrying out its functions under this title, unless otherwise stated, two members of the Commission shall constitute a quorum and official action can be taken only on the affirmative vote or concurrence of at least two Commissioners.

(e) The annual salaries of the Commissioners shall be determined in accordance with the provisions of title 5, United States Code. Each Commissioner shall devote his or her entire time and attention to the business of the Commission, shall not pursue any other business or occupation, and shall not receive compensation from any other Federal, State, tribal, or nongovernmental office or position.

(f) Each Commissioner shall, before taking office, take an oath to execute faithfully his or her duties.

(g) Payment of salaries and related benefits for the Commissioners and expenses related to costs associated with drafting the Commission's initial regulations pursuant to section 305 shall be paid from funds appropriated under section 601. All other expenses of the Commission, including but not necessarily limited to administative and personnel costs under section 303, shall be paid from the special fund created in section 315(e).

SEC. 303. EMPLOYEES AND FACILITIES.—(a) The Secretary shall provide administrative services to the Commission on a reimbursable basis, including such things as making available to the Commission appropriate office space, furnishings, equipment, supplies and such other things as, in his judgment, the Commission may require in the performance of its duties.

(b) Except as provided in subsection (c) of this section and except as provided by paragraph 304(a)(3), the Secretary shall provide all personnel services to the Commission, including, but not limited to, appointment and removal of Commission staff members, in accordance with the Secretary's determination of what the Commission needs to carry out its duties, subject to funds available (not including initial startup costs authorized under section 601). Any person appointed under this subsection shall be appointed and paid subject to the provisions of title 5, United States Code.

(c) The Secretary shall appoint a general counsel for the Commission who shall serve as its legal adviser. The annual salary for the general counsel shall be determined in accordance with the provisions of title 5, United States Code. Subject to the appointment authority of the Secretary and funding limitations (except initial startup costs), the Chairman shall secure such other attorneys as the Chairman, after consultation with the general counsel, shall deem necessary to assist the general counsel. The general counsel and other attorneys appointed under this subsection shall be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service. The Attorney General shall represent the Commission in any legal proceeding to which the Commission is a party.

(d) No statute which grants a preference to Indians in personnel actions shall apply with respect to the Commission.

SEC. 304. ORGANIZATION AND DUTIES, IN GENERAL.—(a) The Commission shall, under any plan of organization it deems expedient—

(1) subject to the approval of the Secretary, make rules and regulations to carry out the provisions of this title and the purposes of this Act;

(2) issue orders;

(3) enter into contracts or agreements with Federal, State, or tribal agencies and private firms for the performance of any activity necessary to discharge its duties either on a reimbursable or nonreimbursable basis (and persons who engage in activities for the Commission pursuant to such contracts or agreements shall be considered agents of the Commission while so engaged); and

(4) perform any and all other acts consistent with this title and the purposes of this Act.

(b) The Commission shall submit a report concerning its activities to the Secretary at least once in each fiscal year and at such other times as the Secretary may direct.

SEC. 305. RULE MAKING AUTHORITY.—(a) The Commission shall, in accordance with the provisions of section 553 of title 5, United States Code, and subject to the approval of the Secretary, adopt, amend, and repeal rules of general application. Such rules shall include, but shall not be limited to—

(1) rules setting out the requirements for a bingo license entitling the holder thereof to operate a bingo establishment or a particular class of bingo establishment, the methods and forms of application which any applicant for such a license must follow, and the type

of information to be furnished by any applicant for such a license;

(2) rules setting out the requirements for employment in a bingo establishment and for any bingo license required for employment in or other connection with a bingo establishment and the methods and forms of application which any applicant for such a license must follow;

(3) rules establishing fees pursuant to subsection 315(b);

(4) rules defining and limiting the hours and conditions of play in a bingo establishment;

(5) rules defining and limiting the types of bingo that may be played in a bingo establishment, and the manner in which such games may be played or conducted;

(6) rules concerning the cost of admission to a bingo establishment;

(7) rules concerning the cost of participating in bingo games and extensions of credit to allow such participation;

(8) rules concerning the value of the cash or other property that may be, or that shall be required to be, awarded as prizes for bingo;

(9) rules concerning the dispensing of alcoholic beverages in licensed bingo establishments which must, as a minimum, require that such dispensation be in accordance with any applicable state or tribal ordinance, regulation, or licensing requirement;

(10) rules concerning the amount of compensation that may be paid to employees of bingo establishments; and

(11) rules concerning management contracts and management contractors.

(b) The Commission may adopt rules authorizing an Indian tribe itself to promulgate rules concerning and of the above matters (except for the matters described in paragraphs (a)(1), (A)(2), (a)(3), and (a)(11)) pertaining to the regulation of any bingo establishment within the tribe's jurisdiction, and such tribal rules shall become effective upon adoption by the Commission in accordance with this section. Where the Commission adopts the such rules, the Commission shall, to the extent practical, contract with the Indian tribe under paragraph 304(a)(3), on a reimbursable basis, for the provision of personnel and services to be used in enforcing such rules: *Provided*, That such personnel shall be commissioned by the Commission as officers of the United States for the sole purpose of carrying out responsibilities under such contracts. Reimbursement for any such contract shall not exceed the amount of the fees paid to the Commission by such an Indian tribe pursuant to subsection (b) and (c) of section 315.

(c) Nothing in this Act precludes an Indian tribe from exercising regulatory authority provided under tribal law over a bingo establishment within the tribe's jurisdiction: *Provided,* That such regulation is not inconsistent with this Act or with any rules or regulations adopted by the Commission.

SEC. 306. MANAGEMENT CONTRACTS.—(a) Subject to the provisions of this title, any tribe or organization established by a tribe entitled to apply for a license to operate a bingo establishment pursuant to subsection 307(a) may enter into a management contract.

(b) A management contract must be approved by the Commission either prior to or contemporaneously with the granting of a license to operate a bingo establishment to the tribe or tribal entity that is a party to the contract. The term of the management contract shall not exceed the term of the license. After notice to the Commission, a tribal licensee may terminate a management contract before the expiration of the term of the license, and if a tribal licensee so terminates a management contract and intends to continue to operate a bingo establishment it must apply for a new license: *Provided, however,* That the Commission may, in its discretion and under such conditions as it may approve, allow such a tribal licensee to continue operating under the current license without a management contractor while the application for a new license is pending.

(c) In considering whether to approve a management contract, the Commission may, inter alia—

(1) request the furnishing of information pertaining to the prospective management contractor and any person described in paragraph (1) of subsection 307(b) in the possession of any Federal, State, or tribal organization (and notwithstanding any other provision of law, the head of any such Federal organization receiving such a request shall make such information available to the Commission, and without charge);

(2) arrange for any Federal, State, tribal, or private organization to conduct an investigation of the prospective management contractor and of any person described in paragraph (1) of subsection 307(b) and to furnish the results of the investigation to the Commission; and

(3) require the prospective management contractor and any person described in paragraph (1) of subsection 307(b) to respond to oral or written questions concerning any matter the Commission deems relevant to determining the management contractor's suitability in-

cluding, but not limited to, the type of information described in subsection 307(b).

(d) The Commission may only approve a management contract that—

(1) complies with all rules of the Commission governing such contracts;

(2) contains all the provisions for such contracts mandated by subsection (e); and

(3) provides for payment to the management contractor of either a reasonable sum certain, or a reasonable percentage of the net income, which shall not, in any event, exceed 40 per centum of the net income including the payment to the management contractor.

(e) Any management contract must specifically provide—

(1) that is will not take effect until approved by the Commission and that its term shall not exceed the term of the license granted to the tribal licensee that is a party to the contract;

(2) that adequate accounting procedures are maintained and that verifiable financial reports are prepared by or provide to the tribal licensee on at least a monthly basis;

(3) that appropriate tribal officials shall have reasonable access to the daily operations of the bingo

establishment and shall have the right to verify the daily gross bingo revenue and net income from such establishment;

(4) for a minimum guaranteed payment to the tribal licensee that has preference over the retirement of development and contruction costs;

(5) for an agreed ceiling for the repayment of development and construction costs; and

(6) for grounds and mechanisms for terminating the contract without the approval of the Commission.

(f) The Commission shall not approve any management contract that it determines not to be in the best interests of the tribe, or if it determines that any person listed in paragraph (1) of subsection 307(b)—

(1) is an elected member of the governing body of the Indian tribe which is a party to the management contract or which has authorized an entity established by the tribe which is a party to the management contract;

(2) has been or subsequently is convicted of any felony or of any gaming offense;

(3) has knowingly provided materially false statements or information to the Commission;

(4) is a person whose prior activities, criminal record, if any, or reputation, habits and associations

pose a threat to the public or tribal interest or to the effective regulation and control of bingo, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods and activities in the conduct of bingo or the carrying on of the business and financial arrangment incidental thereto;

(5) has, or has attempted to, unduly interfere or influence for gain or advantage any decision or process of tribal government relating to the bingo activity; or

(6) has deliberately or substantially failed to comply with the terms of any management contract approved pursuant to this section.

(g) A management contract may be suspended, modified, or revoked, and a fine imposed on a management contractor pursuant to section 310.

(h) The Secretary may delegate his authority and responsibilities pursuant to the provisions of section 2103 of the Revised Statutes, as amended (25 U.S.C. 81) (which requires his approval of management contracts), to the Commission, with respect to such contracts. Upon such delegation, Commission approval of a management contract shall be deemed to safisfy the provisions of section 2103 (25 U.S.C. 81).

SEC. 307. LICENSING AND INSPECTION OF BINGO ESTABLISHMENTS.—(a) Any Indian tribe, except an Indian tribe in a State which does not authorize or permit bingo to be conducted by any person or organization, may, pursuant to a valid tribal ordinance or resolution—

(1) apply for a license entitling it to operate a bingo establishment; or

(2) establish or authorize a separate entity to apply for such a license.

(b) The application shall be in such form and contain such information as it required by this title and the rules of the Commission: *Provided, however,* That the application must state whether the applicant is planning to enter into a management contract. If the applicant indicates it is planning to enter into such a contract, a copy of any proposed contract shall be submitted with the application. Any application indicating that the tribal applicant is planning to enter into such a contract shall also include, in addition to any other information required by the Commission—

(1) the name, address, and other pertinent background information on the management contractor (including individuals comprising the management contractor having a financial interest in, or management responsibility for, such contract) or in the case of a corporation, those individuals who serve on the board of directors of such corporation and each of its stockholders who hold (directly or indirectly) 5 per centum or more of its issued and outstanding stock;

(2) a complete financial statement of each person listed pursuant to paragraph (1), a description of the previous experience which each person listed pursuant to paragraph (1) has had with other management contracts with Indian tribes or with the gaming industry generally; and

(3) such other information as the Commission may by regulation prescribe including but not limited to the name and address of any licensing or regulatory agency with which such person has had contact relating to gaming, proof of the identity of individual persons, employment record of individual persons, arrest record of individual persons, criminal history of individual and other persons, tax returns of individual and other persons, lists of past and present business associates of individual and other persons, and list of past and present personal associates.

(c) The Commission may approve applications for a license under this section only if it has approved any proposed management contract submitted in connection with the application and is satisfied that—

(1) the entire net income of the bingo establishment is to be deposited in a fund for the use of the general welfare of the tribe;

(2) the applicant will, if granted the bingo license, allow annual independent audits of all aspects of the operation of the bingo establishment by an independent certified public accountant or public accounting firm, the results of which will be furnished to the Commission;

(3) the applicant has paid, and will continue to pay, all fees and other charges required by subsection 315(a);

(4) the proposed bingo establishment will be located entirely on lands that for a continuous period of a least ten years prior to the date of the application have been within the limits of an Indian reservation: *Provided further*, That any land which becomes the original reservation of an Indian tribe upon the tribe's becoming federally acknowledged shall be deemed to have met the requirement of this paragraph: *And provided further*, That the existing gaming facilities on trust land now held for the following tribes at their following respective locations shall also be deemed to have met the requirements of this paragraph:

(A) the existing gaming facility on trust land of the Fond du Lac Band at Duluth, Minnesota;

(B) the existing gaming facility on trust land of the Mashantucket Pequot Tribe at Ledyard, Connecticut;

(C) the existing gaming facility on trust land of the Pasqua Yaqui Tribe in Arizona;

(D) the existing gaming facility on trust land of the Poarch Band of Creek Indians in Alabama; and

(E) the existing gaming facility on trust land of the Seminole Tribe at Tampa, Florida.

(5) except pursuant to a management contract approved pursuant to section 306, no person employed by or in any way connected with the bingo establishment for which the license is sought will receive compensation in any form based on a percentage of gross bingo revenue or net income or based on a percentage of any other money or property received in connection with the operation of the bingo establishment.

(d) With respect to any application for a license to operate a bingo establishment, the Commission shall ascertain the ability of the prospective licensee, and any management contractor with which the prospective licensee has entered into a management contract, to comply with the provisions of this title and the rules of the Commission, and otherwise determine the suitability and fitness of the prospective tribal licensee and the management contractor, if any, to operate a licensed bingo establishment in an honest manner, for the general economic benefit of the tribe. The Commission shall grant or deny such an application and may grant a license to operate a bingo establishment under such limitations, conditions, or restrictions as it deems advisable. A license to operate a bingo establishment shall state that its holder consents to the inspections by the Commission pursuant to subsection (f), and either that the tribal licensee is entitled to operate the bingo establishment without a management contract, or that the tribal licensee is entitled to operate the bingo establishment in accordance with a specifically identified management contract approved by and filed with the Commission.

(e) The Commission may suspend, modify, or revoke a license to operate a licensed bingo establishment pursuant to sections 310 and 311, and may, with the consent of the tribe, impose additional conditions of operating such an establishment.

(f) For the purposes of determining and ensuring compliance with this title and any rule or regulation thereunder, and of investigating possible violations of sections 1166 through 1168 of title 18 of the United States Code, the Commission and its agents or employees may, at any reasonable time and without prior notice or the requirement for a warrant:

(1) inspect and examine any licensed bingo establishment as frequently as the Commission shall by regulation provide, but in no event shall there be fewer than two inspections per year;

(2) inspect all equipment and supplies, and ascertain the identity of any person in, upon, or about a licensed bingo establishment or in any portion thereof;

(3) summarily seize and remove from a licensed bingo establishment any equipment or supplies for the purpose of examination or inspection;

(4) demand immediate access to and inspect, examine, photocopy and audit all papers, books, and records of tribal licensees on the premises of their licensed bingo establishments, or elsewhere as practicable; and

(5) demand immediate access to any portion of the premises of a licensed bingo establishment and, in the presence of an appropriate representative of a tribal licensee, conduct a physical count of cash, tokens, receipts, chips or any other material.

(g) The refusal of a tribal licensee or management contractor to cooperate fully and promptly with the Commission and its agents and employees in their carrying out of any inspection authorized by this subsection shall be the basis for disciplinary action pursuant to subsection 310(b).

SEC. 308. LICENSING OF BINGO EMPLOYEES.—(a) The Commission may determine which classes of bingo employees shall be licensed as a condition of employment or connection with, or of continued employment or connection with, a bingo establishment.

(b) With respect to any applicant for a license as a bingo employee, the Commission—

(1) may demand proof of the applicant's identity and may require the applicant to submit such other information as the Commission, in its discretion, deems relevant including, but not limited to, employment record, criminal and arrest record, tax returns, and lists of past and present business and personal associates;

(2) may request the furnishing of information pertaining to the applicant in the possession of any Federal, State, or tribal organization (and notwithstanding any other provision of law, the head of any such Federal organization receiving such a request shall make such information available to the Commission, and without charge);

(3) may arrange for any Federal, State, tribal, or private organization to conduct an investigation of the applicant and to furnish the results of the investigation to the Commission; and

(4) may require the applicant to respond to oral or written questions concerning any matter the Commission deems relevant to the application including, but not limited to, the type of information described in paragraph (1).

(c) A license issued pursuant to this section shall be carried by the holder thereof while engaged in the performance of his or her duties.

SEC. 309. CONSIDERATION OF APPLICATIONS FOR BINGO LICENSES; TIME LIMITS; HEARINGS.—(a) Upon receipt of an application for a bingo license, the Commission shall cause an appropriate review to be made.

(b) If the application is for a license to operate a bingo establishment and the applicant indicates it intends to enter into a management contract, the Commission shall, within two hundred and seventy days, either approve the contract and issue the license, or notify the prospective licensee and management contractor that the type of license applied for will not be granted or the management contract will not be approved and advise the tribal applicant and the management contractor that they are entitled to a hearing before the Commission pursuant to section 558(c) of title 5, United States Code.

(c) If the application is for a license to operate a bingo establishment and the tribal applicant indicates it does not intend to enter into a management contract, or if the application is for a license as an individual licensee, the Commission shall, within ninety days, either issue the license, or notify the prospective licensee that the type of license applied for will not be granted and advise the applicant that such applicant is entitled to a hearing before the Commission pursuant to section 558(c) of title 5, United States Code.

SEC. 310. RENEWAL AND REVOCATION OF BINGO LICENSES; DISCIPLINARY ACTIONS.—(a) A bingo license shall continue in effect in accordance with the following schedule, unless earlier suspended, modified, or revoked by the Commission in accordance with this title—

(1) a license issued to an individual licensee shall remain in effect for one year;

(2) a license entitling a tribal licensee to operate a bingo establishment pursuant to a management contract shall remain in effect for two years; and

(3) a license entitling a tribal licensee to operate a bingo establishment without a management contract shall remain in effect for three years: *Provided, however,* That the Commission may extend the effective period of any license for up to eighteen months to facilitate its consideration of license renewals in an orderly manner.

(b) Whenever the Commission has reason to believe that a tribal licensee, individual licensee, or management contractor who is a party to a management contract approved by the Commission has violated any provision of this title, any rule adopted pursuant to this title or any order of the Commission, in such a manner that the license or approval of the management contract should be suspended, modified, or revoked, or that a monetary fine should be imposed it shall provide such a licensee or management contractor with a written complaint stating the acts or omissions which form the basis for such belief and of the action or choice of actions being considered by the Commission. The allegations of acts or omissions must be set forth in ordinary and concise language and must specify the statutes or regulations which the licensee or management contractor is alleged to have violated, but must not consist merely of allegations stated in the language of the statutes or regulations.

(c) The Commission shall serve a copy of the complaint issued pursuant to this section upon the individual or tribal licensee or management contractor either personally or by certified or registered mail at such licensee's or management contractor's address on file with the Commission.

(d) Any licensee or management contractor to whom is addressed a complaint issued pursuant to this section shall submit a response within sixty days of service. The response shall state in short and plain terms any defense to each act or omission alleged in the complaint, shall admit or deny the facts alleged in the complaint, shall state which allegations in the complaint such licensee or management contractor is without knowledge or information to form a belief as to their truth (which allegations shall be deemed to be denied), shall set forth any matter which constitutes an avoidance or an affirmative defense, and may demand a hearing before the Commission.

(e) Failure to demand a hearing constitutes a waiver of the right to a hearing and to judicial review of any order or decision of the Commission. Failure to answer the complaint within the time specified in subsection (d), or failure to appear at the hearing scheduled pursuant to subsection (f), shall constitute an admission by the licensee or management contractor of all matters alleged in the complaint, in which case the Commission may take action based on such an admission and on other evidence without further notice to the licensee.

(f) The Commission shall determine the time and place of the hearing requested by the licensee pursuant to subsection (d) as soon as reasonably practical after receiving the licensee's or management contractor's response. The Commission shall notify the licensee or management contractor of the time and place of the hearing either by personal service or by certified or registered mail at least twenty days before the hearing.

(g) After the preceding provisions of this section have been complied with, the Commission may do any or all of the following with respect to any licensee or management contractor to whom a complaint has been addressed under this section:

(1) suspend, modify, or revoke the bingo license;

(2) suspend, modify, or revoke the approval of the management contract (and a suspension or revocation of the management contract operates as a suspension or revocation of the tribal license as well);

(3) order a tribal licensee or management contractor to keep an individual from the premises of the bingo establishment or not to pay the individual any remuneration; and

(4) fine any licensee or management contractor any amount not more than $50,000 for each separate violation of the provisions of this title or of a rule or order of the Commission.

(h) Fines imposed pursuant to this section shall, when paid, be deposited in the general funds of the Treasury. Fines imposed pursuant to this section on a tribal licensee shall not be considered as an expense for purposes of computing net income.

SEC. 311. EMERGENCY ORDERS.—(a) Notwithstanding the provisions of the preceding section, the Commission may issue an emergency order for the suspension, modification, or limitation of a bingo license whenever—

(1) it has reason to believe that an individual licensee or management contractor has committed or has knowingly allowed the commission of a violation of section 1167 or 1168 of title 48, United States Code, that a tribal licensee has knowingly allowed such a violation, or that such action is necessary to prevent such a violation; or

(2) it has reason to believe the licensee has not paid any fee or charge authorized by this title.

(b) Such an emergency order must be personally signed by all Commissioners serving at the time it is issued and shall include a statement of facts constituting the alleged emergency necessitating such action.

(c) Such an emergency order shall be effective immediately upon service on the licensee to whom it is directed, either personally or by registered or certified mail to the licensee's address on file with the Commission. The emergency order remains effective until further order of the Commission or until the matter is finally disposed of in accordance with the preceding section.

(d) Within five days after the issuance of an emergency order, the Commission shall cause a complaint to be served on the individual or tribal licensee involved in accordance with the preceding section.

SEC. 312. CIVIL PROCEEDINGS.—(a) At the request of the Commission, the Secretary may request the Attorney General to institute a civil action in a district court of the United States to restrain a violation of any provision of this title, or of any rule, order, or decision of the Commission, to compel compliance with any rule, order, or decision of the Commission, or to collect a fine imposed by the Commission.

(b) For purposes of subsection (a), venue shall be in any district wherein any defendant resides, is employed, or does business, or in the district wherein is located any bingo establishment or proposed bingo establishment which is involved in or which is the subject of the case or controversy.

SEC. 313. REVIEW OF COMMISSION ORDERS.—(a) The Secretary shall have authority to review any final decision of the Commission concerning management contracts pursuant to section 306, licensing of bingo establishments and bingo employees pursuant to section 307 and 308, and disciplinary action pursuant to section 310.

(b) The court of appeals (as designated in subsection (c)) has exclusive jurisdiction to enjoin, set aside, suspend (in whole or in part) or to determine the validity of—

(1) any final rule made pursuant to section 304 and 305; and

(2) any final decision of the Commission concerning management contracts, licensing of bingo establishments and bingo employees, and disciplinary action, which has been approved by the Secretary or which the Secretary has declined to review.

(c) Chapter 158 of title 28 applies to review under this section and—

(1) for purposes of any final rule made pursuant to section 304 and 305, and for purposes of any final decision of the Commission concerning management contracts, the licensing of bingo establishments and bingo employees, and disciplinary action, which has been approved by the Secretary or which the Secretary has declined to review, the Secretary shall be considered the "agency" as that term is used in that chapter; and

(2) any final rule or decision described in subsection (b) of this section shall be considered to be the "order" as that term is used in that chapter.

SEC. 314. SUBPOENA AND DEPOSITION AUTHORITY.—(a) A Commissioner shall have the power to require by subpoena the attendance and testimony of witnesses and the production of all books, papers, and documents relating to any matter under consideration or investigation. Witnesses so summoned shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

(b) The attendance of witnesses and the production of books, papers, and documents, may be required from any place in the United States at any designated place of hearing. The Commission may request the Secretary to request the Attorney General to bring an action to enforce any subpoena under this section.

(c) Any court of the United States within the jurisdiction of which an inquiry is carried on may, in case of contumacy or refusal to obey a subpoena to any person, issue an order requiring such person to appear before the Commission (and produce books, papers, or documents if so ordered) and give evidence concerning the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(d) A Commissioner may order testimony to be taken by deposition in any proceeding or investigation pending before the Commission at any stage of such proceeding or investigation. Such depositions may be taken before any person designated by the Commission and having power to administer oaths. Reasonable notice must first be given to the Commission in writing by the party or his attorney proposing to take such deposition, and, in cases in which a Commissioner proposes to take a deposition, reasonable notice must be given to the holder of any bingo license or any applicant for such a license, or his attorney, whose interests would be affected thereby. The notice shall state the name of the witness and the time and place of the taking of his deposition. Any person may be compelled to appear and depose, and to produce books, papers, or documents, in the same manner as witnesses may be compelled to appear and testify and produce like documentary evidence before the Commission, as hereinbefore provided.

(e) Every person deposing as herein provided shall be cautioned and shall be required to swear (or affirm, if he so requests) to testify to the whole truth, and shall be carefully examined. His testimony shall be reduced to writing by the person taking the deposition, or under his direction, and shall, after it has been reduced to writing, be subscribed by the deponent. All depositions shall be promptly filed with the Commission.

(f) Witnesses whose depositions are taken as authorized in this chapter, and the persons taking the same, shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

SEC. 315. FEES AND OTHER CHARGES.—(a) The Commission shall require that an applicant for a license as a tribal licensee pay to the Commission a fee which, in the opinion of the Commission, will be equal to the cost of conducting the investigation described in sections 306 and 307 concerning the tribal applicant and the management contractor, if any, and any hearing pursuant to section 309. The Commission may require such a fee to be paid in installments or increments if, in its opinion, it is impracticable to determine these costs in advance.

(b) The Commission shall establish a schedule of fees to be paid by each tribal licensee to the Commission. Such fees shall be fixed to derive as nearly as possible an amount equal to all expenses of the Commission not covered by the fees described in subsection (a) (except the salaries and related benefits paid to the Commissioners and except the costs attributable in fiscal years through fiscal year 1987 to the organization of the Commission and its preparation of regulations) and shall be based on a percentage of each tribal licensee's gross bingo revenue or net income.

(c) Until altered by regulation to comply with the requirements of subsection (b), each tribal licensee shall pay to the Commission an amount as determined by the Commission but not to exceed five percent of its gross bingo revenue and one percent of its net income per calendar month.

(d) The Commission shall submit an annual report accounting for fees derived pursuant to this section, for fines derived pursuant to section 310, and for all expenditures of the Commission to the inspector general of the Department of the Interior. The inspector general shall, in addition to any other authorized activities with respect to the Commission, conduct an annual audit of its receipts and expenditures and shall submit the results to the Secretary.

(e) There is established in the Department of the Treasury a special fund into which all fees collected under this section shall be deposited and used to pay the expenses of the Commission, as limited by subsection (b) of this section, in such amounts and to the extent provided in appropriations acts.

TITLE IV—CRIMINAL SANCTIONS

SEC. 401. Chapter 53 of title 18 of the United States Code is amended by adding at the end thereof new sections 1166 through 1168 to read as follows:

"§ 1166. Gambling in Indian country

"(a) Except as provided in subsection (c), all State laws pertaining to the licensing, regulation, or prohibition of gambling, including but not limited to criminal sanctions applicable thereto, shall apply in the Indian country in the same manner and to the same extent as such laws apply elsewhere in the State.

"(b) Whoever in the Indian country is guilty of any act or omission involving gambling, whether or not conducted or sanctioned by an Indian tribe, which, although not made punishable by any enactment of Congress, would be punishable if committed or omitted within the jurisdiction of the State in which the act or omission occurred, under the laws governing the licensing, regulation, or prohibition of gambling in force at the time of such act or omission, shall be guilty of a like offense and subject to a like punishment.

"(c) For the purposes of this section, the term "gambling" does not include bingo conducted in a bingo establishment licensed by the American Indian Bingo Commission and does not include purely ceremonial or social gambling involving only members of an Indian tribe.

"(d) It is the intent of Congress that criminal prosecutions of violations of State gambling laws in Indian country should ordinarily be undertaken by the State, pursuant to subsection (a), and that prosecutions by the United States under subsection (b) should take place only where the circumstances justify: *Provided, however,* That this subsection is not intended to confer any rights enforceable at law or in equity on any person.

"§ 1167. Theft from licensed bingo establishments

"(a) Whoever embezzles, abstracts, purloins, willfully misapplies, or takes and carries away with intent to steal, any moneys, funds, or other property of a value of $1,000 or less belonging to a bingo establishment licensed by the American Indian Bingo Commission shall be fined not more than

$100,000 or be imprisoned for not more than one year, or both.

"(b) Whoever embezzles, abstracts, purloins, willfully misapplies, or takes and carries away with intent to steal, any moneys, funds, or other property of a value in excess of $1,000 belonging to a bingo establishment licensed by the American Indian Bingo Commission shall be fined not more than $250,000, or imprisoned for not more than ten years, or both.

"§ 1168. Theft by officers or employees of licensed bingo establishments

"(a) Whoever, being an officer, employee, or individual licensee of a bingo establishment licensed by the American Indian Bingo Commission, embezzles, abstracts, purloins, willfully misapplies, or takes and carries away with intent to steal, any moneys, funds, assets, or other property of such bingo establishment of a value of $1,000 or less shall be fined not more than $250,000 and be imprisoned for not more than five years, or both;

(b) Whoever, being an officer, employee, or individual licensee of a bingo establishment licensed by the American Indian Bingo Commission, embezzles, abstracts, purloins, willfully misapplies, or takes and carries away with intent to steal, any moneys, funds, assets, or other property of such bingo establishment of a value in excess of $1,000 shall be fined not more than $1,000,000 or imprisoned for not more that twenty years, or both.".

SEC. 402. The analysis for chapter 53 of title 18 of the United States Code is amended by adding at the end thereof the following:

"1166. Gambling in Indian country.
"1167. Theft from licensed bingo establishments.
"1168. Thefts by officers or employees of licensed bingo establishments.".

TITLE V—EFFECTIVE DATES

SEC. 501. The provisions of this Act shall take effect on enactment except the provisions of title IV shall take effect on October 1, 1987: *Provided, however,* That management contracts entered into and approved by the Secretary before the effective date of this Act shall remain in effect until October 1, 1987 unless earlier terminated by the Secretary.

TITLE VI—AUTHORIZATION OF APPROPRIATIONS

SEC. 601. Subject to subsections (b) and (e) of section 315, there are hereby authorized to be appropriated in each fiscal year such sums as may be necessary to carry out the purposes of this Act.

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